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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

3 MARK I. SOKOLOW, et al.,

4 Plaintiffs,

5 v.

04 CV 397 (GBD)

6 PALESTINE LIBERATION
7 ORGANIZATION, et al.,

8 Defendants.

9 New York, N.Y.
10 February 11, 2015
9:45 a.m.

11 Before:

12 HON. GEORGE B. DANIELS,

13 District Judge

14 APPEARANCES

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(Trial resumed; jury not present)

THE COURT: Good morning.

MR. YALOWITZ: Your Honor, unless you want to start, I have a long list.

THE COURT: OK. Let's address what needs to be addressed before we continue with the witnesses.

MR. YALOWITZ: What we have had on witnesses in the last two days has been a circus. We have had witnesses who have no direct knowledge of anything that happened in the case. We had a lady here yesterday who came and said, I was the public face for peace.

THE COURT: I'm not sure whether this is an application or a speech. What is your application?

MR. YALOWITZ: I want no more testimony about all the buildings were destroyed unless it is linked to a specific attack in this case, number one.

Number two, I want to make sure that Michael Sfard, who is scheduled to testify next, doesn't start talking about how there are two systems of justice, one for the Palestinians and one for the Israelis, which is what I think the defendants are planning to try to sneak in.

Number three, I want no more fact witnesses who say I hate terror and I was trying to fight terror unless they are percipient witnesses who have nonhearsay evidence about the actually facts evidence in this case.

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1 Number four, I want Marcus to testify because we need
2 to rebut the misimpression that this jury is left with from
3 these two witnesses that there is only one public face of the
4 PA and it's against terror.

5 THE COURT: The last two things you said are
6 inconsistent. If there is more than one public face, then you
7 can't complain that more than one public face is talking about
8 their commitment against terror. This person who just
9 testified is a high-level PLO official and legislator.

10 Now, I assume Mr. Marcus would say that she would be
11 the public face of the PLO. So those two positions are
12 inconsistent.

13 MR. YALOWITZ: What I am saying is my hands were quite
14 closely cuffed in my affirmative case.

15 THE COURT: In doing what?

16 MR. YALOWITZ: In presenting the negative public face
17 of the PA and the PLO, the incitement of terror, the
18 encouragement of terror, public statements encouraging terror.
19 I understood the court's ruling. I did my best to abide by it.

20 THE COURT: I never restricted you with regard to any
21 questions you asked any of the witnesses in that regard.

22 MR. YALOWITZ: The issue was putting on documents --

23 THE COURT: I ruled on individual documents and
24 individual pieces of evidence that you said that you wanted to
25 offer in support of that position.

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1 MR. YALOWITZ: Right. I think I hewed to those
2 rulings as closely as I could.

3 So my problem is I think they have opened the door to
4 rebuttable testimony.

5 THE COURT: Tell me what Marcus is going to say that
6 is supposed to be directly rebutting someone's testimony? Who
7 is he going to rebut and what is he going to say?

8 MR. YALOWITZ: He is going to rebut Ashrawi and Faraj,
9 and I understand they are going to call Issa, and Issa is a
10 bird of the same feather. He is an ex-human rights lawyer who
11 has recently joined the PA.

12 So Marcus is going to say, that's all well and good
13 that they have people who say those things, but look at the
14 other things they say. For example, there are times when
15 Arafat has gone on television and whipped up the crowd to
16 encourage violence and terrorism.

17 THE COURT: I have examined what you consider to be
18 examples of that, and part of my decision is I reject that
19 premise. You can't say that someone is saying I am against
20 terror, that the converse of that is someone, as you want to
21 characterize, whipped up a crowd emotionally with the
22 implication that he is saying I am for terror. You don't have
23 that. You didn't offer that on the other side. I even
24 restricted them in the same manner I restricted you.

25 If you want to say that somebody who came in here who

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1 is a PA official and that person has either one or two
2 positions, I am for terror or I am against terror, obviously
3 that's relevant. The witness comes in and says, I am a PA
4 official, I am a person who can state the position of the PA
5 either currently or indicate what the position of the PA has
6 been on terror and the position that we have stated is that we
7 are against terror.

8 Now, if you have some evidence, testimony or document,
9 that says that I am for terror, then I would like to see it.
10 Because the inferences that you want to draw, because some
11 individual is at a funeral or some individual says we are
12 brothers in the struggle, that does not translate into what you
13 want to characterize it as as a statement of, I am for terror,
14 I want everybody to go out and commit terrorist acts, I commit
15 terrorist acts.

16 If you have that kind of thing, then fine. Show it to
17 me and I will let you counter that. But my position has been
18 consistent, that you can't just simply say because at some
19 emotional event or some interview when the person is asked
20 about something in general, they say something that you say
21 aligns them with terrorism, because you and I both know that 99
22 percent of those circumstances, if not 100 percent of those
23 circumstances, if that individual was directly asked, are you a
24 terrorist and are you for terror and are you telling people to
25 go out and commit terrorist acts, they would say no. We know

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1 that it's part of your argument. If you have something like
2 that, but I have never seen anything like that.

3 MR. YALOWITZ: Let me give you two examples of things
4 that I think are really close to the bone on this issue that we
5 have.

6 We have videos and newspaper articles on PA-owned
7 media. So this is their own media that they own and control.

8 THE COURT: We went through that and I gave you some
9 of those.

10 MR. YALOWITZ: You did. And we have glorifications of
11 particular perpetrators in this case. Now, some of them are
12 after the time, I understand that and I understand that was
13 your view and I get that. I am smart enough to understand that
14 was your view.

15 Now we have people who come, like this guy Issa, who
16 didn't even join the PA until 2014, and they are having him be
17 the public face saying we are against terror. We have
18 testimony about how they had trouble with Hamas in 2007. So
19 what they have done is they have opened up the time frame very
20 significantly.

21 I don't think anybody can argue legitimately that it's
22 irrelevant that the PA on PA TV honored Abdullah Barghouti, or
23 that the PA on PA TV honored Nasser Shawish, or that the
24 minister of detainees and ex-detainees, whose name was Issa
25 Karaka, went and paid solidarity visits to the family of

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1 Abdullah Barghouti.

2 THE COURT: The last thing that you said, yes, a
3 reasonable person can disagree, that because you go and visit
4 who is otherwise an innocent collateral person with regard to
5 their relative who committed an act, simply because you go
6 visit that person and console that person, no, you can't make
7 that argument. That is an illegitimate argument.

8 If my mother blew up a building and is thrown in jail
9 or killed in the process, because someone comes to me and says,
10 I'm sorry your mother died, the only reasonable inference is
11 not that the person is coming because that person is a
12 supporter of the terrorist act.

13 MR. YALOWITZ: I agree with that, that the mere fact
14 of paying a visit. Obviously you have to look at, what did
15 they say? Did they publish the visit on their official media?
16 Did they say things that were glorifying the actions of the
17 person?

18 THE COURT: You didn't give me anything in conjunction
19 with those visits by this person in which this person said, I
20 went there because I want you to know I am a terrorist and I
21 not only support what this terrorist did, but we helped him
22 commit this offense. Because that's part of your problem too.
23 You want to make this case about terrorism. This case is not
24 about terrorism. This case is not about who supports
25 terrorism, who is in favor of terrorism. It is about who

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1 committed specific terrorist acts that are in issue in this
2 case. That's part of the balance that I am trying to deal
3 with.

4 You can't simply say that it advances your argument by
5 saying, OK, they like this guy who was a terrorist. So that
6 translates into that they are in favor of terrorism, and that
7 further translates into they were in furtherance of the
8 terrorist act he committed, and that further translates they
9 are complicit in the terrorist act they committed.

10 MR. YALOWITZ: What you're saying is where I started
11 out this morning. I said, let's have percipient witnesses.
12 Let's stop with the high-level lady who doesn't know anything
13 about any of the facts or a high-level guy that joined in 2014
14 who doesn't know anything about the facts, or the general who
15 got medals for fighting terror.

16 OK. They have presented that evidence. It's not
17 relevant. It's not probative on the core issues of the case.

18 THE COURT: I understand your reaction to these
19 witnesses. I don't understand what specific testimony, what
20 questions and answers that you believe were in this case that
21 you say were improper. As a matter of fact, I gave you
22 significant leeway, over their objection, to go through with
23 this last witness every single relevant question that you
24 thought was appropriate with regard to whether or not this
25 witness agreed with you that it would not be appropriate to

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1 support terrorists and their terrorist acts. You went through
2 that in painstaking detail. I allowed you to do that.

3 It's appropriate for the jury to assess that, to see
4 whether or not this person is going to try to say something
5 that is unreasonable, say something that is simply a hidden
6 bias, say something that is defied by logic.

7 MR. YALOWITZ: And now what I want to do is show that
8 in fact, in addition to the actions, which we have their
9 actions already in evidence, the jury can reach those
10 conclusions, but in addition to their actions, I want to show
11 that their words, for example, putting a video up saying Wafa
12 Idris is great, or putting a video up saying Nasser Shawish is
13 great, that they have other words that are inconsistent with
14 the testimony of these witnesses that they have brought. I
15 think that's a fair rebuttal to the way that they chose to put
16 on their case.

17 THE COURT: I say this finally and then you can tell
18 me specifically what it is you want me to reconsider, which
19 video or which statement. But I specifically, in painstaking
20 detail, went through every one of those statements. In
21 fairness to you, with all due respect to your argument, the way
22 you're arguing this is your characterization of these
23 statements. It's not the words that are in these statements.

24 So if you want to compel me, you need to tell me, this
25 witness, who you need to determine, Judge, is a spokesperson or

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1 acting on behalf of the PA, made this particular statement that
2 I am quoting to you. I want to put that statement before the
3 jury because that statement, word for word, is what I say is
4 their commitment, it is reflective of the PA or PLO's
5 commitment to terrorist activity, and furthers my argument that
6 they were involved in the terrorist activities that were
7 committed in this case.

8 Show me, give me the line that you say is the proof of
9 that. As I said to you, if they say, we are against terrorism
10 and you have some statement where they said we are for
11 terrorism, then show it to me and show me that that is someone
12 who made a statement officially or in their capacity as a
13 spokesperson for the PA or PLO and I will allow you to put that
14 in. But I have looked at every one of these and none of them
15 say that. It is an inference you want to draw and I think it
16 is an unreasonable inference.

17 MR. YALOWITZ: Let me just ask your views about the
18 two that I have in mind.

19 THE COURT: OK.

20 MR. YALOWITZ: Because that will inform my thinking.

21 I will give you three things that I have in my mind.

22 The first is a video that went up on PA TV immediately
23 after the Wafa Idris suicide bomb. So we are in the time frame
24 of the case. I know you remember because we had a lot of
25 questions about it. What is it? It's a music video, a

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1 performance.

2 THE COURT: Right. I definitely remember that.
3 That's the one I said is this MTV? I don't know what it is.

4 MR. YALOWITZ: I am not the guy to put it in context
5 because it's not my expertise. Marcus is the guy to put it in
6 context because Marcus studies the PA media.

7 THE COURT: And he knows when this was produced, why
8 it was produced, what it was produced for?

9 MR. YALOWITZ: I am sure he does.

10 THE COURT: What is his answer to those questions?

11 MR. YALOWITZ: I am sure I can get that information.

12 THE COURT: I can't advance that argument for you
13 unless I have that information. You say that he can, but I am
14 not sure he knows exactly under what circumstances this
15 performance was given.

16 Part of my problem -- and I don't mean to keep
17 interrupting you. I am going to try to focus you. If you're
18 trying to convince me -- part of my problem is that with regard
19 to your overall they control the media, it's sort of like
20 saying to me, well, I watched this TV show on the BBC and so
21 therefore I want to use that as an official statement by the
22 British government. I can't do that. You have got to give me
23 something more than that. TV is news, entertainment. It is
24 fluff. It is commercials. Everything on TV is not an official
25 statement by the government.

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1 MR. YALOWITZ: What you're doing, and it's not
2 unreasonable because you never lived in the West Bank, but what
3 you're doing --

4 THE COURT: You haven't either. I don't know.

5 MR. YALOWITZ: I have never lived there either, but I
6 have learned something about it.

7 THE COURT: I have learned a little, not as much as
8 you.

9 MR. YALOWITZ: I would like you to learn a little more
10 during the trial from Marcus.

11 What Marcus will teach is there are lots of TV
12 stations. There are TV stations that are independent. There
13 is Al Jazeera. There is a TV station called PATV, which is
14 owned and controlled by the government and which only puts on
15 things that the PA approves. That is his testimony. It is not
16 just his opinion; he has got an evidentiary basis for it.

17 THE COURT: That's true of many public television
18 stations.

19 MR. YALOWITZ: So that when PATV puts on a music video
20 glorifying a suicide bomber, I'm not sure it matters who wrote
21 the song, who performed it. I think what matters is PATV is
22 sending a message of approval of her actions.

23 THE COURT: Why? You haven't demonstrated to me he is
24 in a position to say that. Simply because it is on TV. You
25 say they put it on TV. I don't know if they put it on TV or

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1 they allowed it to be placed on TV. That's a distinction. I
2 don't know if it was their decision, you know what, let's
3 glorify a terrorist, or somebody came to them and said, we have
4 a concert, we want to put it on, can we put it on and we have
5 got this famous performer, who everybody likes, who has a bunch
6 of songs, and we want to put it on. And they say, OK, fine,
7 put it on. People like to watch that kind of stuff.

8 I don't even have any evidence that anybody in the PA
9 was even aware of what the content of this song was going to be
10 about. It's such speculation for me to say that. And that's
11 only your first hurdle. Because it's not an official statement
12 of a government official. It's a song. It is entertainment.

13 You know, Yasser Arafat didn't go to the UN to sing
14 speeches. That's not the way it works in the real world. I
15 can't accept that some woman, that we don't even know who she
16 is, decided she wrote a song or she sang somebody else's song
17 that glorified somebody that they considered to be somebody to
18 be glorified, and then I am supposed to assume that that's an
19 official statement by the Palestinian Authority or the PLO.

20 MR. YALOWITZ: I hear what you're saying. I really
21 do. I am not sure I am doing a good job of communicating my
22 views, which are when you take a video and you play it
23 repeatedly on your TV station, that sends a message. That
24 reflects your state of mind.

25 THE COURT: How many times do you say this video was

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1 played?

2 MR. YALOWITZ: I have to look it up, but dozens.

3 THE COURT: Who decided to play this video?

4 MR. YALOWITZ: The evidence that Marcus will bring is
5 that this station is tightly controlled and nothing goes on it
6 unless the PA officials approve it.

7 THE COURT: That's true of almost every station.

8 MR. YALOWITZ: If NY1 put broadcasts dozens of times
9 saying some guy who went into Times Square and blew himself up
10 is great, that would say something about what the City of New
11 York thinks about terrorism. That would be communicative.

12 THE COURT: I am listening to what you're saying and
13 I'm not sure, in the abstract, that's a particularly compelling
14 argument. You say it like it's compelling, but do you really
15 believe that? You really believe that if NBC allows Saturday
16 Night Live to broadcast for 30 years that you can put that as
17 evidence of what NBC's position is on any particular political
18 subject that they decide to ridicule?

19 MR. YALOWITZ: That's totally different.

20 THE COURT: Why is that totally different? You
21 haven't given me the evidence why it is totally different.
22 What is the evidence?

23 MR. YALOWITZ: Because it is a private company, for
24 profit, protected by the First Amendment. I can't think of a
25 more different circumstance.

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1 THE COURT: What evidence do you have that a
2 government official made a decision to put this on as an
3 indication that the government is itself making a statement
4 about glorifying this particular individual?

5 MR. YALOWITZ: Because they don't put anything on that
6 station, the evidence is, both documentary and testimonial from
7 Marcus, that they don't put anything on that station unless
8 it's approved by the editorial board of PATV, which is
9 appointed, paid, controlled and dominated by the political
10 officials of the PA.

11 THE COURT: But because they allowed it on TV --

12 MR. YALOWITZ: And played it repeatedly.

13 THE COURT: But because they allowed it on TV is not a
14 reasonable conclusion that -- one, I don't even know what
15 government official you claim even saw this, or even reviewed
16 this. You want some nebulous sort of government guy must have
17 looked at this.

18 Tell me who in the government approved this for the
19 TV.

20 MR. YALOWITZ: I don't have the guy's name memorized.

21 THE COURT: Do you have somebody?

22 MR. YALOWITZ: Let me finish the sentence.

23 We know who it is and we have documents from their own
24 mouth saying, we are going to make reforms to make the PATV
25 independent.

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1 THE COURT: That has nothing to do with the clip that
2 you want to put on. Who do you say in the government made a
3 conscious decision that reflects that the government said, we
4 are putting this on because this is our government view?

5 MR. YALOWITZ: I don't have the guy's name memorized.

6 THE COURT: You have the guy?

7 MR. YALOWITZ: We have a guy.

8 THE COURT: And you say this is a government official
9 who specifically approved this and under circumstances in which
10 it is reasonable for the jury to conclude that he was, on
11 behalf of the government, saying this is the government's
12 official position?

13 MR. YALOWITZ: OK. Let me break that down because I
14 am not going to come with evidence saying the guy sat in his
15 office and watched the video and put a stamp on it saying
16 approved.

17 THE COURT: I assume you're not going to come in with
18 any evidence close to that.

19 MR. YALOWITZ: But I am going to come with evidence
20 that says, the practice and pattern of this TV station is that
21 it's all approved, they don't have a First Amendment, they
22 don't have a separation between publisher and editor, and so
23 everything they put on reflects a decision by them to allow it
24 on.

25 THE COURT: OK. That doesn't advance your argument.

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1 Simply because they make a decision to allow it on is not
2 evidence that it is their own statement that they are
3 announcing today we are for terror. That's not what you can
4 offer it for.

5 MR. YALOWITZ: Let me give you a little bit broader
6 perspective. This video is one example of so many in which the
7 PA turned Wafa Idris into a national hero. And I think the
8 jury is entitled to hear that. It is very, very specific to
9 our case. They name summer camps after the woman, they name
10 town squares after the woman.

11 THE COURT: "They" who?

12 MR. YALOWITZ: The PA.

13 THE COURT: I don't have any recollection that you
14 offered any such evidence, from my review, in order to put this
15 before the jury.

16 MR. YALOWITZ: I don't think I offered documents, but
17 that's the testimony of Marcus.

18 THE COURT: His testimony has got to be based on
19 something. What did he look at? Can we look at what he looked
20 at?

21 MR. YALOWITZ: Of course we can.

22 THE COURT: See, I am saying to you, on the record
23 that you have given me you don't even have the answers to most
24 of the questions that I think are relevant to give you a ruling
25 in your favor.

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1 You say Mr. Marcus has it hidden in his back pocket.
2 I have given you a full opportunity to tell me on what basis
3 you say that this evidence is an official statement by the PA.
4 If it is not an official statement by the PA, then it is not
5 admissible for the purpose in which you want to offer it.

6 MR. YALOWITZ: I have got to move off it. I really do
7 understand your views. I appreciate the guidance. I have got
8 other problems with these defendants today. That's why I am
9 moving on.

10 Last night we got --

11 THE COURT: You got the two other witnesses. I have
12 the letter.

13 What are we doing with these witnesses? Let me find
14 out why they put you in this position and why I shouldn't
15 preclude the witnesses.

16 MR. ROCHON: Can I tell you what I anticipate the
17 schedule is for the day?

18 THE COURT: Yes.

19 MR. ROCHON: Those witnesses will testify next week.
20 In terms of how you manage the jury's time --

21 THE COURT: They just all arrived.

22 MR. ROCHON: We have three witnesses lined up and
23 ready to go. I know Mr. Yalowitz has some other arguments to
24 make. I don't know if they relate to the witnesses that will
25 testify this morning. I think both sides would very much

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1 appreciate time working through the jury instructions today
2 because we are going to have our five-day break.

3 THE COURT: How soon do you think you will be finished
4 with your three witnesses?

5 MR. ROCHON: Just after lunch. I was anticipating
6 that perhaps the court could consider getting through the
7 witnesses, letting the jury go, and working with us on the
8 instructions. I at least would benefit because we are going to
9 close next week.

10 THE COURT: Yes.

11 MR. ROCHON: As to these two witnesses that he
12 complains of, the record on that is we had indicated we would
13 not be calling them in light of the court's rulings because at
14 that point the document that they are relevant to is not in
15 evidence.

16 MR. YALOWITZ: That's false, and I have to address
17 that.

18 THE COURT: Mr. Yalowitz, I will always give you your
19 turn. Relax. Just relax. Your jumping up in the middle of
20 his statement is not more persuasive than your giving me your
21 objection after.

22 Mr. Rochon, what are you calling these guys for and
23 what are they going to say?

24 MR. ROCHON: They are the drafter and one of the
25 people whose handwriting is on that memorandum that concerned

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1 Wafa Idris that was used on one of the experts for the
2 plaintiffs' examination.

3 THE COURT: What memorandum?

4 MR. ROCHON: It's the one that says at the top in
5 handwriting, this shows that the GIS was involved in the Wafa
6 Idris issue.

7 THE COURT: You have the person who wrote that?

8 MR. ROCHON: Yes. That's one of the two people. The
9 other is one of the individuals whose handwriting is on the
10 side.

11 These witnesses became particularly relevant after
12 Shrenzel testified in some length about the document and gave
13 views of it. On February 2, therefore, when we gave a list of
14 our witnesses to plaintiffs, we included these two witnesses as
15 may-call witnesses. I have that e-mail and I can tender it to
16 the court.

17 THE COURT: I take your word for it.

18 MR. YALOWITZ: I don't. I haven't seen it. I'm not
19 sure what Mr. Rochon is talking about.

20 MR. ROCHON: We gave it to counsel this morning. I
21 will give it to counsel again. We of course gave it to him on
22 February 2 as well.

23 This is responsive to that testimony.

24 THE COURT: Did you indicate to them at that time what
25 the subject matter of their testimony would be?

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1 MR. ROCHON: No, we didn't. Of course, it was a may
2 call. But their names had been referenced in court either that
3 day or the day before. They are the names on the stipulation
4 we did. Remember we did a stipulation as to whose names were
5 on that memorandum.

6 THE COURT: Everybody knew that these were the two
7 people whose names were on the memorandum.

8 MR. ROCHON: Right. And we provided them in discovery
9 in response to an interrogatory as to whose names were on the
10 memorandum. The witness testified about it. We stipulated to
11 those names. On February 2 we gave those names to the
12 plaintiffs as two people we may call.

13 THE COURT: What are these two witnesses going to say?

14 MR. ROCHON: The woman who drafted it would explain
15 the basis for the information she had.

16 THE COURT: What is she going to say?

17 MR. ROCHON: She would testify that she lived in the
18 camp where -- I don't think she would say this, actually.

19 THE COURT: Tell me what she is going to say. That's
20 my question. That's all my question is.

21 MR. ROCHON: I am being too lawyerly today.

22 She would say that she received that information
23 that's in the memorandum from someone in the camp, from hearsay
24 in the camp. There were rumors about it. She told her boss
25 and her boss told her, put it in a memo, and she put it in a

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1 memo. She is a low-level administrative employee, not a
2 decision-maker. She said, hey, I heard this, and her boss said
3 put it in a memo and she did.

4 The other guy is one of the signatures who received
5 it. He would say, I got this and I didn't think it was very
6 important.

7 THE COURT: I assume he is going to say a little more
8 than that because that's not what he said on the memo.

9 MR. ROCHON: He didn't write the memo.

10 THE COURT: He wrote something on the memo.

11 MR. ROCHON: The one at the top that says "this
12 shows," that is not this person.

13 THE COURT: Who is the second person?

14 MR. ROCHON: Tmaize.

15 THE COURT: Why are you calling him if he didn't write
16 anything on the memo?

17 MR. ROCHON: He did write something on the memo, just
18 not that part on the top.

19 THE COURT: What is his purpose?

20 MR. ROCHON: Because he is the supervisor of all of
21 these people. He would explain that he looked at this memo and
22 did not attach much importance to it and understood that it was
23 only referencing that Tirawi had some concerns about the family
24 of the woman who had blown herself up.

25 THE COURT: He did what with it?

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1 MR. ROCHON: Nothing because he thought it was big
2 nonissue. Within days, IDF apparently seized the memo and here
3 we are ten years later trying a case where it pops up as
4 evidence.

5 THE COURT: Which witness is that?

6 MR. ROCHON: Tmaize.

7 THE COURT: Tmaize?

8 MR. ROCHON: That's the boss of these people.

9 THE COURT: Mr. Yalowitz.

10 MR. YALOWITZ: First of all, this is trial by ambush.
11 Judge, we were together for a pretrial conference on December
12 16 and Mr. Hill was told by the court, unless you believe that
13 the memo was a fake, it's coming in evidence. I remember that
14 as clear as a bell. I am sure you do too.

15 The next thing we heard from the defendants was the
16 day we offered it in evidence, was going to offer it in
17 evidence, which was January 23, Hill strutted up to the sidebar
18 and said, there is no foundation for this document. And you
19 remember I had to deal with the interrogatory and figure it
20 out, and they stood there silently and we had to wait for
21 another day to put it on.

22 Then we figured it out and we came into the courtroom
23 ready to introduce the interrogatory. And in order to avoid
24 that event, the defendants stipulated that it was authentic and
25 here is who was on it, so they didn't have to put the

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1 interrogatory in. They had the interrogatory. They knew that
2 the document was coming in since December.

3 The other thing that happened in December was you
4 said, I want to know who your witnesses are and what they are
5 going to testify about. So there weren't any new special
6 rulings that happened after December. And they wrote a letter
7 on December 23rd, which said, we are withdrawing these
8 witnesses.

9 THE COURT: And they said they wrote a letter on
10 February 5 saying they decided to put on this witness. You
11 didn't put that in your letter.

12 MR. YALOWITZ: Because they slipped it in.

13 THE COURT: They didn't slip it in. You either got it
14 or didn't get it.

15 MR. YALOWITZ: Let me hand up what they gave because
16 it's pretty deceptive to me.

17 THE COURT: You did not know that they made a
18 statement on this date that they intended to possibly call this
19 witness?

20 MR. YALOWITZ: If this was their way of trying to tell
21 me that they were changing their views about whether to call
22 these witnesses, it is a hide-the-ball e-mail. It is a very
23 hide-the-ball e-mail.

24 THE COURT: Let me see where they are listed.

25 MR. YALOWITZ: Somewhere down at the bottom.

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1 And I certainly didn't take seriously -- I didn't even
2 know that they had put him back on their list. And they
3 certainly never gave me -- remember, the ruling was on December
4 23rd, tell me and you what the witnesses are actually going to
5 testify about. And that was to remedy the defendants'
6 violation of Rule 26(a) because they never gave me those
7 disclosures during discovery.

8 So now here I am, at the end of trial, and all of a
9 sudden it's popped up. One business day from today we are
10 adding some new witnesses. That's really trial by ambush.
11 That is really trial by ambush.

12 THE COURT: Let me make sure I understand the whole
13 scenario. They put these two witnesses on the witness list
14 prior to December 23rd. They withdrew them off the witness
15 list on December 23rd.

16 MR. YALOWITZ: Correct.

17 THE COURT: They put them back on the may-call list on
18 February 2nd. I am not sure what you say that you concluded
19 from the fact that they were taken off the actual witness list
20 in December and then placed on the may-call list.

21 MR. YALOWITZ: I didn't know they were placed on the
22 may-call list.

23 THE COURT: I can't excuse that. Unless you tell me
24 you didn't get the e-mail, you can't say you didn't know.

25 MR. YALOWITZ: They gave me the e-mail. I believe

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1 them.

2 THE COURT: You had it, and your team of lawyers had
3 this e-mail. I assume that you're not using the excuse that
4 you didn't just bother to read it, right? That's not what
5 you're arguing, right? You can't argue they didn't give you
6 this.

7 MR. YALOWITZ: No, I am not arguing they didn't give
8 it to me.

9 Here is my problem. On December 30th, we got a
10 substitution of these two witnesses, Ashrawi and Issa. It was
11 a big deal. And we have been very diligent in preparing for
12 the witnesses that they disclosed on December 23rd and December
13 30th. We have investigated their background. We have pulled
14 their military court records. We have pulled their police
15 records. We know what their activities are. We know if they
16 have been arrested. We know if they have been in jail. We are
17 prepared to cross-examine them.

18 THE COURT: You're arguing that you're not prepared to
19 cross-examine the people who are on the may-call list. I
20 assume that's not true.

21 MR. YALOWITZ: It is true.

22 THE COURT: Why would you ignore the people on the
23 may-call list because then if they called them, you would be
24 unprepared.

25 MR. YALOWITZ: Because the defendants deceived me.

F2B8SOK1

1 THE COURT: Tell me how they deceived you. They said
2 we may call this person. You thought that meant we are not
3 going to call this person?

4 MR. YALOWITZ: Mark Rochon said to me, we are shifting
5 around because I think we are going to add Shehadeh to our
6 will-call list. And I can't see it to know whether Shehadeh is
7 now on their will-call list.

8 THE COURT: On February 2, Shehadeh was the first name
9 on the may-call list.

10 MR. YALOWITZ: So what they did was they kind of did a
11 little head fake. They said we are going to send you something
12 and it's going to be about Shehadeh. I will admit, I did not
13 take the January 5th list and put it side by side with the
14 February 2 list to see if they had slipped in somebody else. I
15 didn't do that. In hindsight, I wish I had.

16 THE COURT: It didn't matter whether they slipped in
17 somebody else. What you're arguing is no one did they put on
18 the may-call list on February 2 should be allowed to testify.

19 MR. YALOWITZ: I am not saying that at all. I am
20 saying when they withdrew their witnesses, when they withdrew
21 their witnesses in a letter to this court on December 23rd,
22 that was a meaningful act.

23 THE COURT: I know. If they put them back on the
24 may-call list, that had to be a meaningful act too, didn't it?

25 Are you saying that if they withdrew them in December,

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1 even though they put them back on the may-call list, that
2 deceived you into thinking that they definitely made a decision
3 that they were not going to call these witnesses?

4 MR. YALOWITZ: When I got the letter in December, I
5 was led to believe by defendants in December that anybody who
6 was not on the will-call list was not going to be called.

7 THE COURT: Even if they were on the may-call list?

8 MR. YALOWITZ: They said, we have got -- let me be
9 very clear what they did in December.

10 THE COURT: I am more concerned about the February
11 list and I am more concerned about whether or not you're saying
12 that it's unfair for them to call anybody who is on the
13 may-call list that you were given on February 2.

14 MR. YALOWITZ: I think it is. I will explain why.

15 THE COURT: You thought because they are on the
16 may-call list, that means they are not going to call this
17 witness.

18 MR. YALOWITZ: No. No. When I got the letter on
19 December 23 and they said, defendants no longer intend to call
20 nine of the witnesses, and one of those witnesses was Sabri
21 Tmaize, and another one of those nine witnesses was Amneeh
22 Reehan, I put tools down on researching those individuals and I
23 didn't have any disclosure like this letter of, this person is
24 going to testify about this subject and that person is going to
25 testify about that subject.

F2B8SOK1

1 So I am sitting here in February trying to put my case
2 on and I get this e-mail that comes in and they don't say to
3 me, we are reinstating these individuals.

4 THE COURT: They said we are putting this on the
5 may-call list.

6 MR. YALOWITZ: They don't say we are reinstating these
7 people expressly and they don't say they are going to testify
8 about the following subjects.

9 I don't know where they are on that list, but they are
10 somewhere hidden down at the bottom.

11 THE COURT: When you say hidden, there is a list and
12 they are one of the names on it.

13 MR. YALOWITZ: I really don't think that counsel
14 should be expected, every time they get an e-mail from their
15 adversary, to go back and compare it to everything that has
16 gone on in the past and see, oh, my gosh, they have tried to
17 slip something in.

18 THE COURT: You expect that of me. You expect me to
19 read all these things every morning and try to figure out what
20 happened two months ago.

21 The bottom line is, you have got to give me a better
22 argument that if they said that the person is on the may-call
23 list on February 2, what was your reasonable expectation about
24 whether or not they would be allowed to call anyone on that
25 may-call list that you got on February 2?

F2BTSOK2

1 MR. YALOWITZ: Well, I certainly think, your Honor,
2 that if they were going to ask the Court for relief from their
3 representation that they were withdrawing those witnesses --

4 THE COURT: But they didn't make any representation to
5 me.

6 MR. YALOWITZ: Yes, they did, sir.

7 THE COURT: Which letter?

8 MR. YALOWITZ: This is docket 677.

9 THE COURT: Is it written to me?

10 MR. YALOWITZ: Yes.

11 THE COURT: What letter are you talking about?

12 MR. ROCHON: Is that the December 23rd letter,
13 counsel?

14 Mr. Yalowitz nodded his head. Thank you.

15 THE COURT: Let me ask you this question. Is there
16 any other witness on the may call list who they withdrew?

17 MR. YALOWITZ: I don't know. The first is that the
18 defendants brought to my attention that they sent -- I believe
19 them, that they sent me this email on February 2.

20 THE COURT: Are you calling anybody else on this may
21 call list?

22 MR. ROCHON: Well, the may call list we have Shehadeh
23 on there, as you see. Of the others, I do not believe so.
24 Excuse me, Khaled Abu Al-Yaman.

25 THE COURT: Yamen you intend to call?

F2BTSOK2

1 MR. ROCHON: Yes, but he wasn't referenced in the
2 letter.

3 MR. YALOWITZ: He was referenced as somebody on their
4 list on December 23.

5 THE COURT: Is there anyone else on this list that you
6 say that you no longer intended to call that you put back on
7 the may call list?

8 MR. ROCHON: The four names at the bottom, Sabri
9 Tmaize, Ghaleb Al-Nobani, Amneh Rehan, Hilel Abdel Haq are four
10 names that all relate to that same memorandum.

11 Judge, just because we had talked about an email but
12 it's not in the record, the email from February 2nd went to
13 seven Arnold & Porter lawyers as well as affiliate counsel,
14 including four sitting at counsel table this morning. So this
15 wasn't a send it to Yalowitz he's too busy to read everything
16 sort of email, this was sent to the whole squad on
17 February 2nd.

18 The other thing I would say is well before the close
19 of discovery in this case, in response to an interrogatory, we
20 provided these names, and you know that. The plaintiffs never
21 sought to depose any of these people.

22 As of December 23rd, I guess the argument would be
23 they had done no preparation related to those people and were
24 going to begin their preparation for dealing with those
25 witnesses I guess after December 23rd, and then now getting the

F2BTSOK2

1 names of these people I guess six days before they would
2 testify that they would not be ready to cross-examine them, I
3 actually think that counsel on both sides have dealt with
4 vastly more difficult circumstances in the course of a trial
5 than preparing to cross-examine witness in that time frame.

6 Moreover, the situation as to these witnesses of
7 course changed with the witness of the plaintiff's expert. I
8 think these are witnesses who, if we never mentioned them as
9 potential witnesses in light of their testimony, we could have
10 added them for the first time ever on February 2nd because
11 their relevance developed in the plaintiff's case.

12 I wasn't planning on calling any of those people until
13 the evidence developed the way it did. And I have to be
14 honest, assuming that the Court -- or I shouldn't say assuming,
15 if the Court allows us to call them, I'm still not a hundred
16 percent sure I will. I will get them here -- I'm working to
17 get them here, there's always visa issues, I'm working to get
18 them here, and I will make -- I apologize for this -- like any
19 lawyer, a game-time decision. That's what I have to do.
20 Because these are witnesses who will be testifying in a very
21 difficult circumstance for them personally, and I'm going to
22 have to make an assessment when I get them to New York: Am I
23 comfortable putting their testimony in on a host of issues that
24 have to do with cultural issues, that have to do with how the
25 case has come in, that has to do with eyeballing them more.

F2BTSOK2

1 The people that met with them are my colleagues. I have not
2 met with them personally before. So I will be making a
3 game-time decision.

4 But I think that the notion that we did what we were
5 asked to do on February 2nd, to give the list -- and although
6 it seems a long list of may calls, most of the names -- the
7 first seven after Shehadeh, the next seven names are damages
8 folks that we had to keep as may call but everybody knew we
9 might not call, given the way we managed the damages portion of
10 the case. The seven names after Shehadeh are all defense
11 experts only as to damages that anyone knew that we might not
12 call because I had to leave on the list but we don't know what
13 might happen.

14 THE COURT: Let me see the document one more time.

15 MR. ROCHON: The email?

16 THE COURT: No, the exhibit.

17 MR. ROCHON: 233.

18 THE COURT: I don't have it in front of me. You can
19 put it on on the screen or give me a hard copy.

20 MR. YALOWITZ: I think that the contrast when they
21 wanted to substitute new witnesses of Ashrawi and Issa and they
22 wrote your Honor a letter and offered to do depositions and
23 they acted immediately is a huge contrast compared to this kind
24 of behavior where they slip it in and they don't say what
25 they're going to testify about, and they do it at 8:00 o'clock

F2BTSOK2

1 in the morning while a witness is coming on the stand. I just
2 think that -- I honestly believe this was intended to deceive
3 me, and I feel very deceived.

4 THE COURT: Where is the signatures and --

5 MR. ROCHON: This is the English translation.

6 THE COURT: Show me where you say each person --

7 MR. ROCHON: This would be the woman Amna. She had
8 this maiden name, married name deal, but this is her, and
9 Tmaize's.

10 THE COURT: And he wrote what?

11 MR. ROCHON: It says, handwriting, brother, illegible,
12 but it's important confirm this with her brother and inform me
13 as soon as possible, and there's a signature, which is Tmaize's
14 signature.

15 THE COURT: And that whole statement --

16 MR. ROCHON: Is scribbled in hand.

17 THE COURT: His hand?

18 MR. ROCHON: Right. If you go to the second, right
19 and left, this is the on the left side, here on the Arabic
20 version would be his scrawl, and the woman who signs it and
21 prepared the letter is here.

22 THE COURT: And he directed her to to what?

23 MR. ROCHON: Actually I don't think that he would say
24 that he directed her to to anything.

25 THE COURT: He wrote something on there for whom?

F2BTSOK2

1 MR. ROCHON: It would probably be for one of his
2 subordinates. She is an extremely junior person.

3 THE COURT: What did he do with it?

4 MR. ROCHON: What he did with it was nothing. He
5 thought it was a non-issue.

6 THE COURT: He did something with it. He wrote a
7 message to someone and gave it to someone, unless you tell me
8 he wrote it and threw it in a desk drawer.

9 MR. ROCHON: He wrote this, and we believe it was
10 seized within a day or two.

11 THE COURT: So his testimony would be he never
12 transferred it to anyone?

13 MR. ROCHON: After he signed it, no, it literally got
14 taken.

15 THE COURT: What's the date of this document?

16 MR. YALOWITZ: That's false, your Honor.

17 THE COURT: Wait a minute. Let me get the dates, then
18 you can tell me what is false.

19 MR. YALOWITZ: I know the dates because Operation --

20 THE COURT: Mr. Yalowitz, relax, have a seat. Okay?
21 Relax. Have a seat. You're not persuasive this way. You're
22 persuasive when you're calm and articulate in your position.

23 MR. YALOWITZ: That's rare.

24 THE COURT: I would like to make it more.

25 This document was drafted by her on what date?

F2BTSOK2

1 MR. ROCHON: The date in the upper left-hand corner,
2 February 14.

3 THE COURT: February 14.

4 MR. ROCHON: That's our understanding.

5 THE COURT: And she gave to him when?

6 MR. ROCHON: I think she gave it to the guy at the top
7 first, at the very, very top, that is a translation of
8 handwriting as well.

9 THE COURT: That's the third person's handwriting.
10 The person she gave the document to.

11 MR. ROCHON: Yeah, someone she had contact with.

12 THE COURT: What happened to the document when he got
13 it?

14 MR. ROCHON: He sends it to the guy on the bottom, you
15 slide down, there's handwriting at the bottom as well, to the
16 brother, head of directorate, that's how he sends it to the guy
17 on the right.

18 THE COURT: Whose handwriting is at the bottom?

19 MR. ROCHON: Abdel Haq.

20 THE COURT: That's the person she sent it to?

21 MR. ROCHON: No, she prepared this -- it's addressed
22 to the people, brother head of national security, head of
23 political security, those are the two individuals -- the
24 handwriting on the bottom and the handwriting at the top.

25 THE COURT: You confused me.

F2BTSOK2

1 MR. ROCHON: I confused myself, your Honor.

2 THE COURT: This was addressed to whom?

3 MR. ROCHON: She didn't put the names.

4 THE COURT: Who do you say this is supposed to be
5 addressed to?

6 MR. ROCHON: Two names, the head of national security,
7 the head of political security, and their names are Abdel Haq
8 and Nobani.

9 THE COURT: But not this person.

10 MR. ROCHON: The guy on the right I think is their
11 boss.

12 THE COURT: So it's not addressed to him.

13 MR. ROCHON: No.

14 THE COURT: And his testimony would be he got this
15 when?

16 MR. ROCHON: We believe on or around the 22nd.

17 THE COURT: When do you claim it was seized?

18 MR. ROCHON: Shortly thereafter.

19 THE COURT: What does that mean?

20 MR. ROCHON: Within days. I understand Mr. Yalowitz
21 thinks that Operation Defensive Shield didn't happen until the
22 end of March, and he's right, but that wasn't the first time
23 the Israelis took documents from the Palestinian Authority.

24 THE COURT: What is the basis for your belief this was
25 seized within days?

F2BTSOK2

1 MR. ROCHON: That's what Tmaize would say.

2 THE COURT: Mr. Yalowitz.

3 MR. YALOWITZ: This document is on a web site saying
4 it was seized in Operation Defensive Shield, which didn't start
5 until March 29. And also, this is written on a computer. This
6 is not a handwritten note where there is only one copy. This
7 was written in 2002. The photocopy machine had been invented
8 and the computer had been invented.

9 THE COURT: I'm missing your point.

10 MR. YALOWITZ: The idea that they didn't have another
11 copy of this because a copy was seized, I just -- and the
12 inference that they want the jury to draw is that they didn't
13 think it was important and then they didn't follow up because
14 the Israelis took the document away from us. That's a joke
15 because the document is on a computer and the information is in
16 their heads. They all still work there.

17 So the reason they didn't follow up is what whatever
18 they didn't follow up on. But the fundamental issue is all of
19 this was fully known to the defendants years ago and they
20 didn't list these people. They didn't disclose these people's
21 testimony during discovery.

22 THE COURT: But they did disclose to you that she was
23 the author of this document.

24 MR. YALOWITZ: No, they didn't. They didn't disclose
25 that.

F2BTSOK2

1 THE COURT: They told me they did.

2 MR. YALOWITZ: No, they didn't. They answered an
3 interrogatory in which it was asked who are the people who
4 signed this letter, and they gave four names. That's what they
5 disclosed.

6 THE COURT: Am I incorrect -- I thought may
7 recollection was even during this trial there was some
8 statement either out of the witnesses -- out of the jury's
9 presence or before the jury that this person was the same
10 person as this person.

11 MR. YALOWITZ: Right.

12 THE COURT: Didn't we have some --

13 MR. YALOWITZ: We did, the defendants offered that
14 because they didn't want the interrogatory answer coming in
15 evidence.

16 THE COURT: So we put it before the jury that the
17 person here is the person Rehan.

18 MR. YALOWITZ: Correct.

19 MR. YALOWITZ: And the defendants -- the Court gave
20 the defendants the opportunity to remedy their discovery
21 violation by giving a list of who they intended to call and
22 what they were going to say, and that at least gave me the
23 opportunity to understand who they were intending to call and
24 what they were going to say. And then on December -- and you
25 have that letter, I handed it up to the Court.

F2BTSOK2

1 And then on December 30, when they were changing their
2 mind and they wanted to add people to the list that they had
3 represented to the Court were going to be witnesses in the
4 trial, they wrote another letter to you and they said we need
5 to make a change.

6 Now they didn't do that. Now here we are a day before
7 they want to put these witnesses on and they have never asked
8 you for any relief until this moment. They have never made any
9 representation of what these people are going to testify about,
10 and I just think at some point trial by ambush has to stop.

11 THE COURT: Well, I am assuming that when this person
12 was put on the list the only thing you could have concluded was
13 that her testimony had to do with this letter.

14 MR. YALOWITZ: Look --

15 THE COURT: Right? You knew that.

16 MR. YALOWITZ: I have been very transparent about this
17 February 2 email.

18 THE COURT: But even before February 2, when this
19 person was identified, if this person was possibly a witness,
20 you knew that most likely this witness would testify to how
21 this letter was prepared.

22 MR. YALOWITZ: The lady.

23 THE COURT: Right.

24 MR. YALOWITZ: I understand that.

25 THE COURT: And I assume whatever preparation you did

F2BTSOK2

1 you were fully prepared to address that if that was going to
2 come up.

3 MR. YALOWITZ: So a lot of the defendants' witnesses
4 have criminal records, and you know we have done a lot of work
5 to get ready for the witnesses based on the representations
6 that we got in December.

7 So this lady, I don't know if she has a criminal
8 record, I know she's from a family that is Fatah activists or
9 whatever they are, but the defendants -- it seems to me that I
10 was purposely put at a disadvantage by these defendants, and
11 they know it. I don't hear Mr. Rochon saying I asked the Court
12 for relief, I told you we were changing our mind. What they
13 did was hid the ball from me, and I have never done that to
14 them. I have never done that to them.

15 THE COURT: I don't have sufficient information to
16 make that determination.

17 MR. YALOWITZ: Let me say this, if you're going to let
18 these witnesses testify, I think we need a deposition like we
19 got with Issa and Ashrawi.

20 THE COURT: I can't do that. If you wanted a
21 deposition you could have taken the deposition during discovery
22 or when they were first put on the list if you thought that was
23 necessary.

24 My position is this, and I will give you this leeway,
25 I think that it is appropriate -- I think independently it is

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1 appropriate rebuttal testimony to bring in the person who wrote
2 this letter. I think that's appropriate. I think that would
3 have been appropriate even if the witness wasn't on the list
4 once you put the document in.

5 But the amount of ambush and surprise is not as great
6 as you say, because it's clear that you knew who this witness
7 was, you clearly knew who wrote this letter, it is clear this
8 person was possibly -- under any circumstance might possibly be
9 a witness, and it's clear this would be the subject matter of
10 her testimony.

11 I can't say that you did not have an opportunity to be
12 prepared to cross-examine her because somehow now it's being
13 disclosed to you at the last minute that this person is the
14 person who had the letter and could come in and say why she
15 wrote the letter and what information she got, and that you
16 didn't have that information in enough time that if you wanted
17 to prepare for the cross-examination of the witness you would
18 have prepared. Quite frankly, I'm not even sure you
19 articulated what you would have done further now other than you
20 said you want to know if she has a criminal record.

21 But it seems to me that you know everything you're
22 going to know other than you wanted to pose questions to her to
23 see how she would answer them and you got some effective
24 question to answer in a deposition. It seems to me that you
25 know everything that you need to know about this witness on the

F2BTSOK2

1 limited testimony that she is going to offer to cross-examine
2 this witness.

3 You put in this document. You put in this document to
4 reflect -- and you want to argue from this document that it
5 reflects that they had knowledge previously of this person's
6 involvement in this. This is the witness that wrote the
7 letter. You knew it was the witness who wrote the letter. If
8 you had any concern that the letter did or did not represent
9 what you want to argue it to represent, you had a full
10 opportunity to depose this witness or determine whether or not
11 you thought this witness was going to give contrary testimony.

12 Whether in saying that you are not -- I can't figure
13 that out, and I'm not going to play detective to do so, but it
14 seems to me that you were aware that this was the author of
15 this document, you were aware this person might possibly be a
16 witness, and even if you hadn't been aware, having put in the
17 document and asking for an inference which she can rebut, it
18 would have been proper for them to call her in rebuttal of the
19 purpose for which you put this in and the argument that you
20 intend to make with regard to this document. And so I'm going
21 to allow her to testify.

22 Now with regard to Tmaize, I'm not particularly
23 completely compelled to allow Tmaize to testify. I will only
24 allow Tmaize to testify if you want to cross-examine him and
25 they want to put him on after you know I'm going to allow him,

F2BTSOK2

1 given the fact that you know I'm going to let her testify.

2 I don't see any -- what she meant when she wrote the
3 letter seems to be the most important thing. If they want to
4 call him and say he did nothing with it, and you would like him
5 to do that so you can cross-examine him and say and demonstrate
6 to the jury that that testimony is incredible, that they had a
7 full opportunity to do this, they had this on the computers,
8 they could have done something with it, they could have
9 investigated it if they wanted to, you can withdraw your
10 objection to him and he could come in here. But if you still
11 have an objection to calling both of these witnesses, I think I
12 am going to sustain to calling the second witness.

13 MR. YALOWITZ: I'm standing on the objection with
14 regard to Tmaize. If we reflect on it and we change our views,
15 we'll certainly let the defendants know so that they can get
16 him here.

17 MR. ROCHON: He's going to be traveling. Getting him
18 here is complicated. We're working with the State Department
19 to get visas for these people.

20 MR. YALOWITZ: If they wanted make to make an earlier
21 decision, then they knew where to find me.

22 THE COURT: If you think that there's any possibility
23 that if they withdraw their objection that you will call him,
24 then you better put him on the plane and get him here.

25 MR. ROCHON: Understood.

F2BTSOK2

1 THE COURT: If they make a decision -- even if they
2 turn to you and say to you after they cross-examine Rehan, you
3 know what, I would love to have this guy on the stand, if you
4 got him in the room, put him on if you want him. If you want
5 to put him on, then you can put him on.

6 MR. YALOWITZ: Thank you. We understand the ruling
7 and the reasons for it.

8 I'm anxious to get the jury in, as I'm sure you are.
9 I still don't know who the witnesses are for today. The
10 defendants are shifting around so much.

11 THE COURT: Give me the three witnesses and the order
12 that you're going to call them.

13 MR. ROCHON: It's been the same for a while. It's
14 going to be Sfard, Issa, and Shehadeh, understanding that we
15 still have argument on Shehadeh.

16 MR. YALOWITZ: We have a problem with Shehadeh.

17 THE COURT: We can do the first two. Can we
18 efficiently move through the first two and then talk about
19 Shehadeh?

20 MR. YALOWITZ: Are the defendants withdrawing
21 Robinson?

22 MR. ROCHON: We're not withdrawing him. I'm not sure
23 that we will reach him, and he's a pretty long witness, and I
24 wanted to discuss it.

25 MR. YALOWITZ: I think we should forge ahead with the

F2BTSOK2

1 testimony.

2 THE COURT: Who is Robinson?

3 MR. YALOWITZ: He's one of their experts.

4 THE COURT: On what issue? You have an objection to
5 Robinson?

6 MR. YALOWITZ: No.

7 THE COURT: Okay.

8 MR. YALOWITZ: I will have objections to some of the
9 things he says, some of them I might even raise in response to
10 questions or answers.

11 THE COURT: All right.

12 MR. YALOWITZ: But I understand why they're calling
13 him.

14 THE COURT: Then let's move forward.

15 MR. ROCHON: Judge, on the other issue, I hesitate to
16 talk, but there's been reference to all these witnesses have
17 criminal records. I want to be very clear, because someday
18 somebody might look at this, the only record that any of these
19 people have is for security type of offenses.

20 THE COURT: Have those been disclosed?

21 MR. ROCHON: No, because they won't let us put them
22 in.

23 THE COURT: I didn't ask you whether you would put
24 them in. Did you disclose whether those individuals have such
25 criminal records?

F2BTSOK2

1 MR. ROCHON: I haven't even made that a focus.

2 THE COURT: Have they requested that information?

3 MR. ROCHON: No.

4 MR. YALOWITZ: I'm requesting it now with regard to
5 the two late disclosed witness. If the defendants have it, I
6 think they should be required to turn it over.

7 MR. ROCHON: All we can do is ask people. The Israeli
8 government doesn't provide us with access.

9 THE COURT: That's fine. Speak to your witnesses and
10 make a representation to Mr. Yalowitz to what extent they have
11 been arrested and served time. It is something that I think
12 you have the obligation to do because in fact that was what you
13 wanted to bring out with several witnesses.

14 MR. ROCHON: Just one.

15 THE COURT: I think one witness made reference to it
16 even though I said you shouldn't bring it out. So if they have
17 been arrested, convicted and imprisoned, you should let them
18 know. Whether they have been detained, that's a different
19 question, but if they have a conviction, I don't know care what
20 kind of conviction it is, a conviction under any jurisdiction,
21 you should find out.

22 MR. YALOWITZ: Your Honor, we request that for all the
23 defendants' witnesses they claim to bring.

24 MR. ROCHON: I'm unaware in a civil case of such a
25 discovery request being made at this point, but I will do what

F2BTSOK2

1 I can to comply with the request.

2 I think the only witness that may be mentioned
3 conviction -- but I may be wrong, because my memory is
4 terrible, was yesterday Ms. Ashrawi, because that's when
5 Mr. Yalowitz asked did she knew where the jail was.

6 THE COURT: No, I think the last witness said he had
7 been detained.

8 MR. ROCHON: I'm sure your recollection is better than
9 mine, but Mrs. Ashrawi's reference, in any event, was certainly
10 not to Israel.

11 THE COURT: I want to to get the witness. If they're
12 an hour or less, maybe we can get them all done.

13 (Continued on next page)
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F2BTSOK2

(Jury present)

THE COURT: Welcome. I am hopeful we can be on schedule so we could finish. I needed to deal with some issues rather than delaying us. So we're prepared to move forward. I will try to get two or three witnesses done today and we'll adjourn, and I'm still confident that we will finish witnesses sometime next week.

You can call defense's next witness.

MR. ROCHON: Thank you. Defendant calls Michael Sfard.

MICHAEL SFARD,

called as a witness by the Defendants,

having been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. SATIN:

Q. Mr. Sfard, please state your name.

A. Michael Sfard.

Q. Mr. Sfard, where are you from?

A. From Israel.

Q. What city did you grow up in?

A. In Jerusalem.

Q. Where do you live now?

A. I live in Tel Aviv.

Q. What country are you a citizen of?

A. I'm a citizen of the State of Israel.

F2BTSOK2

Sfard - direct

1 Q. Do you work?

2 A. I do.

3 Q. What do you do?

4 A. I am a lawyer.

5 Q. It's fair to say that one thing the lawyers from both sides
6 can agree on in this case that is that we won't hold that
7 against you.

8 A. I hope so.

9 Q. Are you licensed to practice law?

10 A. I am.

11 Q. And how long have you been licensed to practice law?

12 A. Since 1999.

13 Q. Where did you study law?

14 A. I studied law at the law faculty of Hebrew University in
15 Jerusalem.

16 Q. Is that the same university that was the subject of a
17 bombing in 2002?

18 A. That is the same university.

19 Q. Were you a student there at the time?

20 A. No, I graduated in 1998.

21 Q. After graduation, did you do an internship?

22 A. I have.

23 Q. Where was that?

24 A. I interned with a known Israeli attorney, human rights
25 attorney, Avigdor Feldman.

F2BTSOK2

Sfard - direct

1 Q. What type of work did you do during your internship?

2 A. Feldman's office focused on criminal litigation and human
3 rights litigation, and these were the main two areas of law
4 that I practiced.

5 Q. Did the criminal litigation involve representing
6 individuals in the Israeli military court system?

7 A. It did.

8 Q. And what year was your internship?

9 A. 1998 through 1999.

10 Q. Did you also stay on with Mr. Feldman after your internship
11 ended?

12 A. Yes, I have.

13 Q. How long?

14 A. I stayed for another year as an associate attorney in his
15 office, then I left for one year for studies and returned for
16 another -- until 2004 again as an associate.

17 Q. And you said you left for studies. What studies did you do
18 at that point?

19 A. Post-graduate studies at the University College London in
20 law.

21 Q. Did you graduate?

22 A. I have.

23 Q. With what degree?

24 A. Masters in law.

25 Q. What did you study at that university?

F2BTSOK2

Sfard - direct

1 A. I studied international human rights law. That was my
2 major.

3 Q. And after you graduated from the University College London,
4 you returned to Israel?

5 A. Yes.

6 Q. Did you say already that you started to work again with
7 Mr. Feldman?

8 A. That's right.

9 Q. How long did you work with Mr. Feldman at that point?

10 A. Up until 2004.

11 Q. And what type of work were you doing at that time period?

12 A. Again human rights work and criminal defense litigation.

13 Q. Did that criminal defense litigation -- was that in the
14 Israeli civilian court or Israeli military court?

15 A. It was in both.

16 Q. So did you actually yourself with Mr. Feldman represent
17 individuals in the Israeli military court system?

18 A. Yes, I have.

19 Q. Was that a trial level or the appellate level?

20 A. In both.

21 Q. What were the years all together in which you practiced law
22 in the Israeli military court system?

23 A. Well, I practiced law at the Israeli military court system
24 since I was an intern in 1998, and then up to probably 2006.

25 Q. At some point did you leave the office with Mr. Feldman and

F2BTSOK2

Sfard - direct

1 start your own law practice?

2 A. Yes.

3 Q. Do you still have that practice?

4 A. I do.

5 Q. How many lawyers are in your firm?

6 A. Five lawyers and two interns in my firm.

7 Q. And besides your representation of individuals in the
8 Israeli military court system, are you familiar with that
9 system from other ways?

10 A. Yes, I am.

11 Q. Were you involved in a study about the Israeli military
12 court system?

13 MR. YALOWITZ: Objection, your Honor, I need to be
14 heard.

15 THE COURT: He could answer that question.

16 MR. YALOWITZ: Yeah.

17 A. I was.

18 THE COURT: Go ahead. Let me see where he's going.

19 MR. SATIN: I would like to repeat the question
20 because the objection came in the middle of asking it.

21 THE COURT: No, go to the next question.

22 Q. Who conducted the study about the Israeli military court
23 system?

24 MR. YALOWITZ: Objection.

25 THE COURT: Sustained.

F2BTSOK2

Sfard - direct

1 Q. What was the time period that the study of the Israeli
2 military court system focused on?

3 MR. YALOWITZ: Objection.

4 THE COURT: Sustained.

5 Q. So based on your own legal practice and your work with the
6 study, are you familiar with the Israeli military court system?

7 MR. YALOWITZ: Objection.

8 THE COURT: Overruled, you can answer.

9 A. I am.

10 Q. Are you familiar with the law in the Israeli military Court
11 system?

12 A. I am.

13 Q. Do you know which types of crimes are prosecuted in the
14 Israeli military court system?

15 A. I do.

16 Q. Do you know how Israel classifies prisoners as security
17 prisoners?

18 MR. YALOWITZ: Objection.

19 THE COURT: Overruled. You can answer that.

20 A. I do.

21 Q. And before we get to that specific testimony, I want to ask
22 you a couple more questions about your background. Have you
23 received any awards for your work?

24 A. I have.

25 Q. What awards?

F2BTSOK2

Sfard - direct

1 A. I received the Emil Grunzweig Award.

2 Q. What is that?

3 A. That is an award given annually by the Association for
4 Civil Rights in Israel to individuals or to groups for their
5 contribution to the advancement of human rights in Israel.

6 Q. How many people get that award?

7 A. Usually one, sometimes two.

8 Q. Have you also received any fellowships?

9 A. Well, actually I received a fellowship a few months ago,
10 yes.

11 Q. What was that for?

12 A. Fellowship with the Open Society Foundation.

13 Q. What is the Open Society Foundation?

14 A. It's a big non-government organization with branches all
15 over the world, and they have headquarters here in New York
16 City, and operates to promote democracy, human rights, and the
17 rule of law.

18 Q. As part of that fellowship, will you be relocated from
19 Israel for a period of time?

20 A. Yeah, I will be relocating with my family to New York City
21 this summer for a year.

22 Q. Do you know where you're going to live?

23 A. Hopefully in a neighborhood that has good public schools
24 and low rents, if possible.

25 Q. Good luck with the rents.

F2BTSOK2

Sfard - direct

1 Mr. Sfard, are you familiar with the term "security
2 offenses?"

3 A. I am.

4 Q. And under the current Israeli military law, what are
5 security offenses?

6 A. Well, the military penal code applicable to the West Bank
7 has a definition of security offenses, and that is every
8 offense that is listed in the table that is attached to that
9 military order.

10 Q. How many different offenses are listed on that table?

11 A. There are 51 different offenses in that table.

12 Q. Does that list include violent and non-violent offenses?

13 A. Yes, it does.

14 Q. Could you please provide the jury with some examples of
15 those non-violent offenses that are on that list of security
16 offenses?

17 A. For example, it includes --

18 MR. YALOWITZ: Objection.

19 THE COURT: I'm going to sustain the objection unless
20 you're going to offer that list into evidence.

21 MR. SATIN: I certainly could.

22 THE COURT: Do you intend to offer the list?

23 MR. SATIN: There was testimony about it.

24 THE COURT: I don't know where he was reading from.
25 Do you intend to offer the list or not?

F2BTSOK2

Sfard - direct

1 MR. SATIN: If that's the --

2 THE COURT: I'm asking you. I'm not trying to
3 restrict you. Are you going to offer the list?

4 MR. SATIN: Sure.

5 THE COURT: Do you object to the list?

6 MR. YALOWITZ: I don't know, I have never seen it
7 before.

8 THE COURT: Is that what he's looking at now that he's
9 getting ready to read from?

10 MR. SATIN: Yes, your Honor.

11 THE COURT: Could you show it to plaintiff's counsel
12 so we can move forward? I want to keep us efficiently moving.

13 THE WITNESS: It's in Hebrew. This is the list, table
14 three.

15 THE COURT: Do you have a list in English?

16 MR. SATIN: I do not, your Honor. I wasn't originally
17 seeking to introduce the list. We're calling him as an expert
18 to testify --

19 THE COURT: I understand why you're calling him. I
20 don't want to waste time. You don't have the complete list
21 that he just referred to?

22 MR. SATIN: We have the complete list, not in English.

23 THE COURT: English is what I'm interested in. You
24 don't have a list in English that the jury or Mr. Yalowitz can
25 see?

F2BTSOK2

Sfard - direct

1 MR. SATIN: No.

2 MR. ROCHON: Your Honor, may I make a suggestion?

3 Maybe we could have the witness testify not the list but from
4 his recollection.

5 THE COURT: That's fine or, Mr. Yalowitz, if you want
6 to get the completes list, if he has th ecomplete list in front
7 of him, I will allow him to read the entire list.

8 MR. YALOWITZ: Let's continue on the basis that the
9 witness won't have the list and --

10 THE COURT: He can have the list. I don't know if
11 he's got to the memorize it.

12 MR. YALOWITZ: As you wish.

13 THE COURT: Unless you have some specific articulable
14 objection let's move forward efficiently. If they want to ask
15 that limited question, they can, and ask the broader question.

16 BY MR. SATIN:

17 Q. Based on your recollection, what are some the offenses on
18 that list?

19 A. On that list there are offenses such as organizing
20 unpermitted demonstrations, organizing unpermitted marches,
21 membership in an unauthorized association, and, of course,
22 there are violent offenses as well on the list.

23 Q. Is breaking curfew on that list?

24 A. Breaking curfew is on that list, also violating order of
25 closed military zone is on the list.

F2BTSOK2

Sfard - direct

1 Q. Would you agree that security offenses under military law
2 are not just violent crimes like attempted murder or murder?

3 A. Yes, I do.

4 Q. Mr. Sfard, when you were involved in the study of the
5 Israeli military court system, did it contain statistics about
6 what types crimes people were charged with in the Israeli
7 military court system?

8 MR. YALOWITZ: Objection.

9 THE COURT: Come up.

10 (Continued on next page)

F2BTSOK2

Sfard - direct

1 (At side bar)

2 THE COURT: You got me spinning my wheels here. I
3 thought I made clear and you had clear in your minds what the
4 parameters would be with regard to this witness's testimony. I
5 don't want to spend more time on this.

6 MR. ROCHON: We're not violating.

7 THE COURT: What's your objection?

8 MR. YALOWITZ: My objection is that they said they
9 were going to talk about what are the security crimes. They
10 did that. What percentage.

11 MR. ROCHON: That's what we're doing next.

12 THE COURT: That's what he asked him and you objected.

13 MR. YALOWITZ: Because he's talking about his study.

14 MR. ROCHON: That's the foundation for the testimony.
15 Let me tell you something. This witness is a lawyer. He's
16 been clearly instructed. He's not going to get into any
17 prohibited areas, this guy.

18 THE COURT: What is he going to say? Because he
19 doesn't have more than five minutes worth of testimony, as far
20 as I'm concerned.

21 MR. SATIN: He's going to say that based on those
22 statistics he obtained, there are one percent for murder and
23 four percent for attempted murder.

24 THE COURT: Where else do you go?

25 MR. SATIN: How does Israeli law determine who is a

F2BTSOK2

Sfard - direct

1 security prisoner.

2 THE COURT: What is the answer to that?

3 MR. SATIN: He's going say there's three grounds based
4 on the law.

5 THE COURT: What are the grounds?

6 MR. SATIN: Committed security offense, any offense
7 with a nationalistic motivation, or the third round is
8 providing service to a terror organization.

9 MR. YALOWITZ: I don't have a problem that.

10 THE COURT: Anything else?

11 MR. SATIN: No, that's it.

12 THE COURT: You can cross-examine him and let's send
13 him on his way and let's get the next guy in here.

14 (Continued on next page)

F2BTSOK2

Sfard - direct

1 BY MR. SATIN:

2 Q. Mr. Sfard, during that study, did you obtain statistics
3 about which types of crimes people were charged with?

4 A. We have.

5 Q. Did you determine what percentage of those crimes were for
6 either murder or attempted murder?

7 A. The figures we obtained have shown between the years 2004
8 to 2006 one percent of all defendants that have been charged in
9 military court system were charged with murder and four percent
10 were charged with attempted murder.

11 Q. Those statistics, the one percent for murder and four
12 percent for attempted murder, do they only involve attacks on
13 Israeli civilians?

14 A. No, not necessarily.

15 Q. What else is there?

16 A. Attacks on Israeli soldiers, Israeli policeman, security
17 forces as well.

18 Q. Are there statistics specifically about attacks on
19 civilians?

20 A. We do not obtain those statistics. I don't think there is.

21 Q. So would the number for just civilians be lower or
22 higher --

23 MR. YALOWITZ: Objection.

24 THE COURT: Sustained.

25 Q. Now I want to ask you briefly about how Israel classifies

F2BTSOK2

Sfard - direct

1 prisoners. Does Israel classify certain prisoners as security
2 prisoners?

3 A. It does.

4 Q. Is there a law or ordinance about that?

5 A. Well, there is an order issued by the Israeli prison
6 service commissioner which classifies prisoners into category
7 of security prisoner.

8 Q. Does that order say how prisoners are specifically to be
9 classified in that way?

10 A. Yes, it does.

11 Q. How many different grounds are there by which someone can
12 be classified as a security prisoner?

13 A. Well, there are three main grounds.

14 Q. What's the first one?

15 A. The first one is prisoners who were charged or convicted
16 for an offense that by its nature and circumstances is an
17 offense against the security of the state.

18 Q. Does that category, the first round, include membership in
19 an illegal or unlawful association?

20 A. It does.

21 Q. What is the second ground?

22 A. The second ground is a person who was convicted or charged
23 with any offense that was committed with nationalistic
24 motivation.

25 Q. Does it matter what the offense is?

F2BTSOK2

Sfard - direct

1 A. No, it doesn't.

2 Q. And what does it mean for an offense to be done with a
3 nationalistic motivation?

4 A. Well, it means with a political aim.

5 Q. And who decides whether the crime is done with a political
6 aim?

7 MR. YALOWITZ: Objection.

8 THE COURT: Overruled. You can answer.

9 A. The prison authorities.

10 Q. To be clear, the prison authorities of what state?

11 MR. YALOWITZ: Objection.

12 THE COURT: Overruled, you can answer.

13 A. The State of Israel.

14 Q. What is the third ground?

15 A. Well, the third ground are prisoners who have been
16 convicted or charged with an offense which had or might have
17 assisted in unlawful association or an individual to cause harm
18 to state security, and those acts have been committed either
19 with knowledge that such damage to security will happen or with
20 indifference to that result.

21 Q. So out of that third category, does the prisoner have to
22 have the specific intent to harm the State of Israel?

23 A. No, it's enough that he's indifferent to the result.

24 Q. Now of those three grounds that you just spoke of, to be
25 classified as a security prisoner, does it have to be shown

F2BTSOK2

Sfard - direct

1 that all three grounds were met or just one?

2 A. It's enough that one ground is met.

3 Q. What is the ground that include the most offenses?

4 A. Well, the ground that deals with nationalistic motivation,
5 because that can include any offense.

6 Q. And does the Palestinian Authority have anything to do with
7 the decision by the Israeli prison service about who gets
8 classified as a security prisoner?

9 A. Of course not.

10 MR. SATIN: Nothing further, your Honor.

11 THE COURT: Mr. Yalowitz.

12 CROSS-EXAMINATION

13 BY MR. YALOWITZ:

14 Q. Mr. Sfard, nice to see you again.

15 A. Nice to see you, too, Mr. Yalowitz.

16 Q. I look forward to seeing you this summer as well.

17 A. This summer?

18 Q. We were together in Jerusalem and we spoke about this case,
19 right?

20 A. That was more than last summer, I think.

21 Q. Now I want to ask you about some of the things that
22 Mr. Sfar spoke to you about.

23 A. Mr. Satin.

24 Q. Mr. Satin spoke to you about.

25 He said that -- he asked you about being convicted for

F2BTSOK2

Sfard - cross

1 participating in demonstrations. Do you remember that?

2 A. Well, I mentioned organizing unpermitted demonstrations.

3 Q. Based on your experience, what would the typical sentence
4 be for somebody who is convicted of that crime?

5 A. I don't think there is a typical sentence because every
6 case and every defendant has its own characteristics, but the
7 offense has a prescribed maximum penalty of ten years.

8 Q. And based on your work, I think you know that almost every
9 case in the system you're talking about is pled, right?

10 There's a plea bargain?

11 MR. SATIN: Objection, beyond the scope.

12 THE COURT: Overruled. You can answer.

13 A. Many of them are.

14 Q. It's more than 95 percent, right?

15 A. These are the estimations, yes.

16 Q. And so do you have any experience representing clients who
17 reach plea bargains for offenses like organizing demonstrations
18 or breaking curfew?

19 A. I have experience in plea bargaining in the military courts
20 but not over that offense.

21 Q. And do you have any information at all about the typical
22 length of sentence for the kinds of non-violence offenses
23 you're talking about?

24 A. Sorry, but again, every trial is a different trial, every
25 defendant is different, and then the penalty depends on the

F2BTSOK2

Sfard - cross

1 circumstances, whether the defendant has prior offenses, I
2 think, of that sort. So I don't think there is a fixed length
3 of sentence.

4 Q. Are you aware of anyone -- can you think of a single
5 example of anyone who actually got ten years for breaking
6 curfew?

7 A. No.

8 Q. Can you think of anyone who got ten years for organizing a
9 demonstration?

10 A. No.

11 Q. Can you think of anyone who got five years for breaking
12 curfew?

13 A. No, I don't know of any specific case.

14 Q. Anyone who got five years for organizing a demonstration?

15 A. No, I don't know.

16 Q. Do you know anyone who got three years for breaking curfew?

17 A. I really don't know because I am not familiar with any
18 specific case of breaking a curfew. I have not represented
19 anyone on that offense.

20 Q. Can you think anyone who got three years for organizing a
21 demonstration?

22 A. No, I can't.

23 Q. Now you also mentioned membership in unlawful
24 organizations.

25 A. Right.

F2BTSOK2

Sfard - cross

1 Q. Al Aqsa Brigades, that's an unlawful organization, right?

2 A. Yes, it is.

3 Q. Membership in Al Aqsa Brigades is a pretty serious offense,
4 isn't it?

5 A. It is an offense that has the penalty of up to ten years
6 according to the military law and order.

7 Q. But being a member of Al Aqsa Brigades is a pretty bad
8 thing, right?

9 MR. SATIN: Objection, your Honor.

10 THE COURT: Overruled.

11 A. In what sense? Yes, definitely it's an offense.

12 Q. You and I agreed when we were together in Jerusalem that
13 the crimes committed by Al Aqsa Brigades and Hamas and
14 organizations like them were crimes against humanity, is that
15 correct?

16 MR. SATIN: Hearsay.

17 THE COURT: Overruled.

18 A. You asked me if I think it was war crimes, and I answered
19 that these are crimes against humanity, absolutely.

20 Q. And now I want to ask you about murder and attempted
21 murder. What's the maximum penalty for murder and attempted
22 murder?

23 A. Well, for murder is death penalty, but death penalty has
24 not been used in Israel. And for attempted murder is 20 years,
25 if I'm not mistaken. I can check that.

F2BTSOK2

Sfard - cross

1 Q. And I think you and I spoke about a number of the
2 perpetrators in these cases, and a significant number of them
3 were actually convicted of murder. Do you remember that?

4 A. Yes.

5 Q. And so those are people who are serving at least one and in
6 many cases multiple life sentences, right?

7 A. That's right.

8 Q. And so you said that there's only one percent of the people
9 in jail for security offenses who -- or one percent of the
10 indictments that were for murders, am I remembering that right?

11 A. During a certain time period, yes.

12 Q. If somebody wanted to separate out murder from lesser
13 crimes, that would be pretty easy for them to do, right?

14 MR. ROCHON: Objection, your Honor.

15 THE COURT: Sustained to the form of the question.

16 Q. How easy do you think it would be to separate out -- to
17 identify the murderers as opposed to the non-violent criminals,
18 based on their indictments?

19 MR. SATIN: Objection to who is the one doing this,
20 your Honor.

21 THE COURT: I'm going to sustain it again as to form.
22 I don't think that's even much of a different question than you
23 asked before.

24 MR. ROCHON: I changed the form.

25 THE COURT: Not much. What are you trying to ask?

F2BTSOK2

Sfard - cross

1 Q. Would you have the ability, based your knowledge, to
2 distinguish between those indicted for murder and those
3 indicted for non-violent crimes?

4 MR. SATIN: Same objection.

5 THE COURT: I'm going to sustain it. Get right to the
6 heart of it.

7 Q. Isn't it a fact that only one percent of those indicted are
8 indicted for murder?

9 A. At a certain time period which we have the figures for,
10 yes.

11 Q. And so isn't it a fact that it would be very easy to
12 identify those murderers and decide how to treat them if one
13 wanted to treat them differently?

14 MR. ROCHON: Objection to form.

15 THE COURT: Overruled. Answer the question.

16 A. If you had the database of prisoners and the offenses they
17 were charged or convicted with, you could assemble a list,
18 yeah.

19 Q. And based on such a list, you could treat the murderers
20 differently from people who had non-violent offenses, right?

21 A. Well, if you have a list, you can do whatever you want with
22 the list, yeah.

23 MR. YALOWITZ: Thank you, nothing further.

24 THE COURT: Any further questions?

25 MR. ROCHON: Your Honor, there is a couple, but I

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1 think in light of the Court's rulings that I prefer to approach
2 the bench before we get to them.

3 THE COURT: If it's something that I said is not in,
4 it's still not in.

5 MR. ROCHON: I know that.

6 THE COURT: If it's something I said was in, you can
7 ask. Is there something magical about being here that gives
8 you guidance on?

9 MR. ROCHON: Yes, I always find it magical. It would
10 be helpful.

11 THE COURT: Ladies and gentlemen, thank you for your
12 patience. I will keep this moving along today. I get tough
13 with the lawyers.

14 (Continued on next page)
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(At sidebar)

MR. ROCHON: I want to -- they keep us from mentioning any of the individual cases, they keep us from mentioning why everyone pleads guilty.

THE COURT: What do you want to do?

MR. ROCHON: Why do 95 percent of the people plead guilty?

THE COURT: Well, we assume 95 percent of the people plead guilty because they believe that it's to their advantage, as opposed to not pleading guilty. Is there another reason why 95 percent of the people plead guilty?

MR. ROCHON: There actually is.

THE COURT: What reason?

MR. ROCHON: We think there's no due process in the system. People faced with that are forced to plead guilty because they have no other option. Mr. Yalowitz knew that and he walked right into it and tried to take advantage of it.

THE COURT: Mr. Rochon, I want you to take a guess as to what my position is on this subject. Take a real good guess.

MR. ROCHON: I know your position, but I need you to give me the ruling because --

THE COURT: The ruling is he has not opened the door to that.

(Continued on next page)

F2BTSOK2

1 (In open court)

2 MR. SATIN: We have no questions.

3 THE COURT: Thank you, sir, you can step down. You
4 can get the next witness.

5 MR. HILL: Your Honor, the defendants call Mr. Shawqi
6 Issa.

7 SHAWQI ISSA,

8 called as a witness by the Defendants,

9 having been duly sworn, testified as follows:

10 DIRECT EXAMINATION

11 BY MR. HILL:

12 Q. Good morning.

13 A. Good morning.

14 Q. Would you please introduce yourself to the ladies and
15 gentlemen of the jury?

16 A. My name is Shawqi Issa.

17 Q. Mr. Issa, do you have a job today?

18 A. I am minister of agriculture and social affairs at the
19 Palestinian government.

20 Q. Have you ever held any other positions within the
21 Palestinian government?

22 A. Yes, I was the minister of detainees and ex-detainees.

23 Q. Sir, let's talk a little about your background. Where did
24 you get your education?

25 A. Well, first I went to university in Moscow where I studied

F2BTSOK2

Issa - direct

1 international law. After that I went to Holland to the Hague
2 where I studied human rights international law. Then I studied
3 at Uppsala University in Sweden environment and protection law,
4 and then I spent a year at Harvard here in the States visiting
5 the school of human rights program at law school.

6 Q. Now prior to becoming part of the Palestinian government,
7 what did you do for a living?

8 A. I was a human rights lawyer.

9 Q. And where did you practice human rights law?

10 A. In the West Bank in Palestine.

11 Q. Now we heard some testimony about something called a
12 technocratic government. Are you part of that technocratic
13 government?

14 A. Yes. This is what they call us now, because this last
15 government, it was a government under two or three conditions.
16 One of them that none of the ministers are members of any
17 political party, and that this government must support and
18 implement the program of the quartet.

19 Q. What is the program of the quartet?

20 MR. YALOWITZ: Objection.

21 THE COURT: Overruled, he can answer.

22 A. The quartet is a committee, the United States, the United
23 Nations, the European Union and Russia. And this committee of
24 the four oversees and controls the peace negotiations and peace
25 process between Palestinians and Israelis and they put together

F2BTSOK2

Issa - direct

1 what is called a road map, it's a political program how to go
2 ahead with --

3 MR. YALOWITZ: Objection.

4 A. -- peace process.

5 THE COURT: No, he can finish his answer.

6 A. And one of the conditions was that this government, its
7 job, let's say, is to work together with the quartet to support
8 this program of peace negotiations.

9 Q. Before we talk about the substance of your testimony, I
10 want to ask you a little bit about your personal life. Are you
11 married?

12 A. Yes, I am.

13 Q. How long have you been married?

14 A. Well, since 1996.

15 Q. Do you have any children?

16 A. 18 years.

17 I have two daughters.

18 Q. How old are your girls?

19 A. 14 and 10.

20 Q. Now Minister, you mentioned that in the past you had been
21 the minister of detainees affairs and ex-detainees affairs, is
22 that correct?

23 A. Yes, correct.

24 Q. For what period of time did you hold that position?

25 A. For about three, four months last year.

F2BTSOK2

Issa - direct

1 Q. Prior to holding that position, did you have familiarity
2 with the Palestinian ministry of detainees affairs and
3 ex-detainees affairs?

4 A. Yes, during my work as a human rights lawyer, all these
5 years in Palestine, I was in contact with all the ministers and
6 the organs who deals with issues related to the society members
7 who I used to protect from violations of human rights. So I
8 know what is the ministry doing.

9 Q. As a result of your work as a human rights lawyer in
10 Palestine, did you become familiar with the laws and
11 regulations and work of the ministry of detainees affairs?

12 A. Yes.

13 MR. HILL: Your Honor, may I approach?

14 THE COURT: Yes.

15 Q. Minister, I handed you what is in evidence as plaintiff's
16 trial Exhibit 512, a copy of the law that pertains to security
17 detainees. Are you familiar with this law and its related
18 regulations?

19 A. Yes, I am.

20 Q. How does the Palestinian Authority go about determining
21 whether a prisoner is a security detainee for the purpose of
22 this law?

23 A. Actually it's not the Palestinians who decide, it's the
24 Israelis.

25 Q. Can you explain what you mean?

F2BTSOK2

Issa - direct

1 A. All these detainees are held in Israeli jails, so some of
2 whom -- some of them are criminals and some are what they call
3 security detainees. So the ministry of detainees in Palestine
4 deals with the second category, the security prisoners, and
5 they get the information from the Israelis who is security
6 detainee according to the records of the Israeli military
7 courts.

8 Q. So does the Palestinian Authority do anything to determine
9 whether someone is a security detainee for purposes of this law
10 other than receive that information from the State of Israel?

11 A. Well, the ministry of detainees, in order to work with any
12 case, any prisoner or his family, they must present to the
13 ministry Israeli recommends that he is a security criminal.

14 Q. You mentioned that there are two categories of prisoners in
15 Israeli prisons, there is what is called the security prisoners
16 and what we'll call the criminal prisoners, right?

17 A. Right.

18 Q. Are the criminal prisoners -- are the families of criminal
19 prisoners eligible for any benefits under Palestinian law?

20 A. Yes, of course.

21 Q. How would the family of a criminal prisoner go about
22 obtaining benefits under Palestinian law?

23 A. Well, first, the ones who are inside the Israeli jails,
24 they all get what we call cantina, which is \$100 a month for
25 each prisoner. This goes to criminals and security prisoners.

F2BTSOK2

Issa - direct

1 And the ministry bills that to the Israelis, they get a monthly
2 payment from the Israeli officials, how many prisoners they
3 have and how much the ministry must pay. So this goes to both,
4 criminals and security. And the other thing is the families,
5 the families of the criminals get benefits from the social
6 affairs ministry.

7 Q. And I think you said this earlier, but you serve as well as
8 the minister of social affairs, right?

9 A. Yes, I am now the minister of social affairs.

10 Q. So if the family of a regular criminal, as opposed to a
11 security detainee, wants to receive benefits from the minister
12 of social affairs, could you explain in general how they go
13 about doing that?

14 A. Well, the ministry of social affairs, as in any other
15 country, takes care of the families who are on special needs or
16 under poverty line or have emergency or special condition that
17 the ministry must prove aid to them. So as part of this, the
18 families of the prisoners, when they don't have their income,
19 the ministry of social affairs must provide them with aid. And
20 there are many programs there, there is the cash payment
21 monthly, and there is the food vouchers, and there is a program
22 to give some of these families, if they are able, a loan to
23 start small business, services of social affairs ministry
24 provide to these people.

25 Q. Now you mentioned that the ministry of detainees affairs

F2BTSOK2

Issa - direct

1 makes payments for what you said was a cantina to the Israeli
2 prison system, right?

3 A. Yes.

4 Q. And what is that money that is given to the Israeli prison
5 system for the cantina used for by the prisoners?

6 A. To buy things from the store inside the jail, like some
7 food, some -- whatever that's enough for them to buy, dessert
8 sometimes. And this used to be before the peace agreement,
9 before the establishment of the Palestinian Authority, the
10 Israelis took care of this, and even right across for a time,
11 but I might say the Palestinian government is forced to pay
12 this money.

13 Q. And is the amount of money that is paid for the cantina the
14 same for regular criminal prisoners and security prisoners?

15 A. Yes, for everyone, it's the same thing.

16 Q. Minister, could you explain -- I know there's two different
17 systems for security prisoners and criminal prisoners in terms
18 of benefits to their families, right?

19 A. Yes.

20 Q. Could you explain roughly how those benefit levels compare?
21 That is, does the prisoner of -- a security detainee get a
22 different type -- I don't think a different type, a different
23 amount of benefit -- let me start the question again.

24 MR. YALOWITZ: Objection.

25 THE COURT: Why don't -- let's take it step by step.

F2B8SOK3

Issa - direct

1 Q. You mentioned that there are two different systems. Right?
2 One for security prisoners and one for regular criminal
3 prisoners, in terms of the benefits their families can get,
4 right?

5 MR. YALOWITZ: Objection.

6 THE COURT: Overruled.

7 A. Yes.

8 Q. Can you compare, roughly, the levels of benefits those two
9 different groups of prisoner families receive?

10 MR. YALOWITZ: Objection.

11 THE COURT: I am going to sustain as to form.

12 Rather than ask him to compare, ask him about one and
13 then ask him about the other.

14 Q. We have heard testimony about the levels of payments that
15 are made to the families of security prisoners already.

16 Can you explain how those levels of payments compared
17 to the benefits available to the families of regular prisoners?

18 MR. YALOWITZ: Objection.

19 THE COURT: Why don't you ask him about regular
20 prisoners and then ask him about security prisoners.

21 Q. You mentioned that the regular prisoners could receive cash
22 payments, they could receive food vouchers, they could in some
23 instances receive --

24 THE COURT: Question?

25 Q. How does that level of benefits compare to what is paid to

F2B8SOK3

Issa - direct

1 security prisoners?

2 THE COURT: Sustained.

3 How much do they get?

4 Come on, guys.

5 THE WITNESS: OK. Shall I answer?

6 THE COURT: Yes, please.

7 A. The security -- let me say, first, before the establishment
8 of the Ministry of Detainees, everyone was taken care of by the
9 Social Affairs Ministry. Even before the Palestinian
10 government, the Israelis did that. The Social Affairs
11 Department during Israeli government in Palestine, they did
12 take care of these prisoners.

13 When the Palestinian government established the
14 special ministry to deal with the security prisoners, they paid
15 to these families according to different elements -- the
16 members of the family, how many kids, whatever, how many years
17 the prisoner spent in the prison, and if the family has income,
18 other income, this also affect what the ministry gives them.

19 Q. Why are there two different systems for security prisoners
20 and regular criminals in terms of benefits that get paid to
21 their families?

22 MR. YALOWITZ: Objection.

23 THE COURT: Overruled.

24 A. Well, the reason for establishing a special ministry for
25 the security prisoners is actually a political reason. These

F2B8SOK3

Issa - direct

1 are so many. Since Israeli occupied, since 1967 until
2 recently, more than 850,000 --

3 MR. YALOWITZ: Objection.

4 THE COURT: I am going to sustain the objection.
5 Let's go on to something else.

6 Q. Can you explain the current rationale for the two systems?

7 A. OK. In short, the Palestinian government felt that in
8 order to get more support from the people of Palestine to the
9 peace process and to its peaceful program, and not leaving
10 these wide range of families as a target for radical groups,
11 they have to give them a value because they have a lot of
12 influence in the society. In West Bank, we have only 3 million
13 Palestinians. So when you compare the numbers, you will find
14 each house has a prisoner.

15 MR. YALOWITZ: Objection.

16 THE COURT: Sustained.

17 Let's go on. Do you have anything else for him?

18 Q. Is there a security reason for having a different system
19 for security detainees as opposed to regular criminals?

20 MR. YALOWITZ: Objection.

21 THE COURT: Sustained.

22 Q. What does the Palestinian Authority hope will happen as a
23 result of a different system for security detainees?

24 MR. YALOWITZ: Objection.

25 THE COURT: Sustained.

F2B8SOK3

Issa - direct

1 MR. HILL: I will tender the witness.

2 THE COURT: Mr. Yalowitz, do you have some questions
3 for this witness?

4 MR. YALOWITZ: Bear with me one second. I may not.
5 No questions.

6 THE COURT: Thank you, sir. You can step down.
7 (Witness excused)

8 MR. ROCHON: We would like a short break before the
9 next witness consistent with our earlier discussions.

10 THE COURT: Let's take a break, ladies and gentlemen.
11 Don't discuss the case. Keep an open mind. I will
12 see you in ten minutes.

13 (Jury exits courtroom)

14 (Continued on next page)

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(Jury not present)

THE COURT: What are we doing next?

MR. ROCHON: The next witness would be Mr. Shehadeh, and we haven't finished our discussion. I have asked him to step out briefly while we do that.

THE COURT: What do you want him to say?

MR. ROCHON: On this last witness, I know you moved Mr. Hill along expeditiously, but I think the court should have allowed the questions, and I would like to briefly explain why.

THE COURT: Yes.

MR. ROCHON: The plaintiffs have made much of prison payments in this case. Frankly, our position overall is they have made too much and they don't bear on the specific incidents in this case. But nonetheless, they got in that testimony over objection and their witnesses said that these reflect the policies in supporting terror.

The defendants have a completely different view as to why they are made and that in fact they assist in fighting terror because otherwise other elements in the society will take the prisoner issue and use it to undermine the government, including Hamas, Hezbollah, and others, who will throw money at those families and try to -- essentially, it's a war of the minds there, and that's actually going on right now.

THE COURT: Don't we already have that testimony?

MR. ROCHON: We have some of it.

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1 THE COURT: We have all of it. Nothing that you said
2 is not before this jury.

3 MR. ROCHON: I understand. This is coming from the
4 man who ran the Ministry, as well as the Social Affairs
5 Ministry, and so he is in a different position than simply a
6 security person.

7 THE COURT: What is he going to say differently?

8 The bottom line is, I sustained it for several
9 reasons. One, it's cumulative. Two, I tried to move you along
10 to ask some appropriate questions in the right form. I think
11 the way the questions were posed was inappropriate. I think
12 the answers the way they were given, particularly his reference
13 to politics, I think is an inappropriate answer. I don't think
14 he is in a position to even testify to the politics of making
15 payments, and the politics of making payments are irrelevant.

16 If he had been directly asked and he had simply
17 responded that we make these payments -- as a matter of fact,
18 he did respond. I didn't strike any of his testimony. He
19 responded the same thing that was said the day before. We make
20 these payments because if we don't make the payments, we are
21 afraid they are going to align themselves with terrorists and
22 that's why we make the payments.

23 Do you think you have got something else to add or
24 some other basis to add it that wasn't asked, you can tell me
25 and I can consider it. I think we have been through all of

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1 this. I think the political tinge of this repeated testimony
2 is inappropriate and I think it is cumulative. I am not even
3 sure that you have demonstrated a basis that this witness is in
4 any position to opine on the politics of the PA.

5 MR. ROCHON: I think he is in a pretty good position
6 to opine on the politics. First of all, he is an appointed
7 political official who has touched both relevant agencies and
8 has run both of the agencies. And, whether we like it or not,
9 the prisoner payments is a political issue, and for us to be
10 confined -- in my client's society, this is one of the most
11 significant political issues.

12 THE COURT: Fine. If you want to argue that, you have
13 this record to argue that. You put that information in and
14 this witness doesn't have anything further to add in that
15 regard. As I said, for all those other reasons, the way it was
16 asked and the way it was answered, I think it went beyond the
17 bounds of what we are discussing. I am running out of patience
18 to try to limit the lawyers and have lawyers simply go in
19 directions where I told the lawyers we weren't going, and I am
20 going to put a stop to it.

21 MR. ROCHON: I didn't think that prisoner payments was
22 one of those areas, Judge.

23 THE COURT: Just about everything is one of those
24 areas because we have talked about everything and I have given
25 you real clear rulings about where I felt you ought to go. And

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1 there is no surprise as to what I think is admissible on that
2 issue as opposed to 99 percent of the issues that we have
3 repeatedly gone on, including the one we addressed at sidebar,
4 which is real clear, that now you thought you had an
5 opportunity to slip in something that I made clear was not
6 going to come in in this case.

7 MR. ROCHON: I didn't slip in. That's why I went to
8 the bench. It's the opposite of slipping it in. I thought you
9 had ruled that way, but I need a ruling sometimes.

10 THE COURT: I gave you a ruling ten times on that
11 issue.

12 MR. ROCHON: But if I think something has opened the
13 door -- I think for him to talk about the plea system and why
14 everyone pleads guilty, I realize I lost that. I am moving on.
15 But on this issue, this witness would have said, for
16 instance --

17 THE COURT: I heard what he said.

18 MR. ROCHON: -- if he had been allowed to continue on
19 the political issues, for instance, the plaintiffs have made
20 much of the increase in payments that were made in 2011.

21 THE COURT: It's irrelevant.

22 MR. ROCHON: You let it in.

23 THE COURT: Excuse me. You objected to that
24 testimony?

25 MR. ROCHON: We did.

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1 THE COURT: To what testimony?

2 MR. ROCHON: To the fact that they used a document
3 that had two laws on it, one of them old and one new, and they
4 were using a document that included the new law as well as the
5 old law, which included the increases.

6 THE COURT: What does it have to do with the politics?

7 MR. ROCHON: That is what I am trying to explain.

8 The reason for that was that after the Gilad Shalit
9 release by Israel, which was negotiated with Hamas, and Hamas
10 got all of these prisoners out, it was undermining the
11 Palestinian government and allowing Hamas to win the hearts and
12 minds of the populous over this prisoner issue.

13 THE COURT: You think this witness is in a position to
14 testify to that from his personal knowledge?

15 MR. ROCHON: Exactly.

16 THE COURT: Well, I don't. I am glad you have given
17 me that further showing because that's a further reason why I
18 would have rejected it, to have him opine on the politics and
19 the influence of Hamas.

20 He wasn't here as an expert witness on Hamas or the
21 politics of the relationship between Hamas and the PA. It's
22 time to focus this trial and go back to what the real issue is.
23 That is not the issue in this case.

24 MR. ROCHON: We didn't want prisoner payments. We
25 objected completely to prisoner payments.

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1 THE COURT: Then you can continue to ignore it because
2 you know it has nothing to do, and you can tell the jury it has
3 nothing to do with what their burden is or what they have to
4 prove in this case. I am sure you can clearly articulate that
5 to the jury.

6 MR. ROCHON: It's difficult because it's come in. The
7 plaintiffs, the first day of their first expert was all about
8 prisoner payments. Half of these boxes are full of prisoner
9 payment records. They went through what Abdullah Barghouti
10 gets paid this year and last year, even though it has got no
11 relevance. We objected to that.

12 Now for it to be said that it's not relevant is
13 unfair. I didn't make it relevant. Mr. Yalowitz made it
14 relevant.

15 THE COURT: The only relevance of prisoner payments is
16 whether or not there is a good reason for making it, a bad
17 reason for making it, they could have made a different choice
18 and why they didn't make a different choice, and that evidence
19 is before this jury.

20 Now, to try to tinge it with, oh, we think politically
21 it's better if we do this, and to say that five times through
22 five different witnesses, particularly in the context of the
23 overall politics with Hamas, we are beyond that point. I don't
24 want to hear any more witnesses on that issue and let's move on
25 and get to what is really the issue before this jury.

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1 Is there anything else we need to address because I
2 want you to get your third witness on, and if we finish that
3 witness quickly, be ready to put on your fourth witness.

4 MR. YALOWITZ: So I think the next witness ought to be
5 Robinson. And the reason I think it ought to be Robinson is
6 because I think Mr. Rochon is bluffing with Shehadeh.

7 THE COURT: He is not bluffing because in five minutes
8 I am going to tell him to call his next witness.

9 MR. YALOWITZ: Let's bring him on then.

10 THE COURT: Is that who you're calling next?

11 MR. ROCHON: Shehadeh.

12 THE COURT: Do we need to discuss him any further?

13 MR. ROCHON: Not on our account.

14 THE COURT: Mr. Yalowitz, is there something we can
15 discuss so you don't need to keep popping up?

16 MR. YALOWITZ: This is the guy they said he is going
17 to say he looked out his window and saw that all the buildings
18 were destroyed.

19 THE COURT: He can say that.

20 MR. YALOWITZ: He is being called as an expert
21 witness.

22 THE COURT: That's not expert testimony.

23 MR. YALOWITZ: Right. So it's inappropriate, number
24 one.

25 Number two, he is going to talk about the Oslo

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1 Accords, and we have heard enough testimony about the Oslo
2 Accords.

3 THE COURT: Is there something relevant that he is
4 going to testify to with regard to the Oslo Accords?

5 MR. HILL: I only want him to say two things that are
6 not yet in evidence.

7 THE COURT: What is that?

8 MR. HILL: They are that as a result of the Oslo
9 Accords, Israel continued to carry the responsibility for
10 defending against external threats, as well as the
11 responsibility for overall security of Israelis for the purpose
12 of safeguarding their internal security and public order.

13 THE COURT: Who cares? What difference does it make?
14 That is what I am trying to understand. Give me the relevance.

15 MR. HILL: It's relevant to respond to the evidence
16 that the PA should have prevented the attacks by arresting
17 people. So the jury needs to know that overall responsibility
18 for that after the Oslo Accords was not the PA's job, that was
19 the Israelis' job.

20 THE COURT: I assume he is in a position on the other
21 hand to also say that there are similar obligations placed on
22 the PA and the PLO in that regard.

23 MR. HILL: That's in the record. I want to tell the
24 jury that the overall responsibility remained with the
25 Israelis.

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1 I also want to tell the jury that the Israelis
2 retained exclusive jurisdiction over any crimes that occurred
3 outside of the Palestinian territories or any crimes against
4 Israelis.

5 THE COURT: Say that again.

6 MR. HILL: Israelis, under the terms of the accord,
7 retained exclusive jurisdiction over any crimes that occurred
8 outside of the territories -- in other words, in Jerusalem,
9 which is where all these attacks took place -- or that involved
10 Israelis, which all of these attacks did.

11 MR. YALOWITZ: It's not relevant. It's confusing.

12 THE COURT: Why does that make a difference in terms
13 of, one, what the Palestinian Authority or PLO obligations
14 were, or why is that relevant one way or the other as to
15 whether or not they were involved in these six terrorist
16 attacks?

17 MR. HILL: It involves the question of whether the PA
18 personnel, who allegedly perpetrated these attacks, were doing
19 so within the scope of their employment.

20 THE COURT: How does that make a difference whether
21 it's within the scope of their employment?

22 MR. HILL: Because the terms under which the PA was
23 created prohibited PA forces from operating in those areas and
24 from investigating those attacks.

25 THE COURT: Maybe you're trying to find something that

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1 I don't even think is in this case. Who cares? Nobody is
2 saying that they are responsible for these terrorist acts
3 because they didn't arrest terrorists. The theory here, and
4 the facts and the evidence the jury has to consider, is whether
5 there is any basis to conclude that they were knowing and
6 intentionally participating in these terrorist attacks. That's
7 been my position. That continues to be my position. I don't
8 know what theory you think that your client is responsible
9 other than that.

10 MR. HILL: If the plaintiffs are not going to be
11 allowed, for example, to argue that because Nasser Aweis and
12 Abdel Karim Aweis were on the Zinni list and they weren't
13 apprehended, that that somehow is evidence of our liability,
14 that's fine.

15 THE COURT: It may somehow be evidence of their state
16 of mind.

17 MR. HILL: In that case I would like the jury to
18 hear --

19 THE COURT: They could have arrested them. Right?

20 MR. HILL: I would like the jury to hear --

21 THE COURT: What this guy has got to say doesn't
22 change that. They still could have arrested him. They were
23 asked specifically to arrest him. How does that change it?

24 MR. HILL: The point is for the crimes that occurred
25 outside of the territory or occurred to Israelis, the PA

F2B8SOK3

1 actually had no jurisdiction to operate for those crimes.

2 That's the point I want the witness to make.

3 THE COURT: That is an unfair and false impression.
4 They did have some authority. They had the authority that was
5 given to them to investigate, arrest, detain those individuals
6 who were present in the Palestinian territories that they
7 believed were committing terrorist acts.

8 MR. HILL: I understand.

9 THE COURT: Isn't that the only issue?

10 MR. HILL: That's the issue.

11 THE COURT: Nobody is arguing they had to run into
12 Jerusalem and arrest people. Do you think somebody has made
13 that argument?

14 MR. HILL: I think it will take three minutes to get
15 the witness to explain that the PA had no ability to operate --

16 THE COURT: That's not true. They had a security
17 responsibility.

18 MR. HILL: Within area A.

19 THE COURT: Right. And there is no dispute in this
20 case as to whether or not they had authority to arrest people
21 in Jerusalem.

22 MR. HILL: Very well.

23 THE COURT: I don't know what else you want the jury
24 to get from that. If that's all you want to call him for,
25 that's not an issue.

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1 MR. HILL: The other area I want to call him about, as
2 the time passed, since he lived in Ramallah, from his personal
3 knowledge, how the ability of the PA police was limited by
4 subsequent incursions by --

5 THE COURT: What relationship did he have to the
6 police that puts him in a position to do so? Just a lay
7 observer?

8 MR. HILL: He was not in the police at the time, but
9 he is aware that on March 11th the Israeli army came to
10 Ramallah and stayed for three days, until March 14.

11 THE COURT: I am not going to allow that.

12 MR. HILL: I want him to testify to that. If I can
13 just make my proffer.

14 THE COURT: You can make your proffer, but I am not
15 going to allow it.

16 MR. HILL: There was evidence in the case in the form
17 of Plaintiffs' Exhibit 148 that Mohammed Hashaika escaped from
18 the Mukataa when the Israeli army invaded Ramallah. That is in
19 evidence. It's important for us, to establish the credibility
20 of that statement, that we demonstrate that the Israeli army in
21 fact came to Ramallah before the date of the bombing in which
22 the Bauers were injured, which was March 21. So I want this
23 witness, who has personal knowledge of that incursion, to say I
24 was in Ramallah on those dates and I know that the army came on
25 the 11th and they stayed until the 14th. I want to do that to

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1 buttress the document which Mr. Yalowitz challenged the
2 reliability of.

3 THE COURT: What document?

4 MR. HILL: Plaintiffs' Trial Exhibit 148, the GIS file
5 that indicates that Hashaika escaped when the Israeli army
6 invaded Ramallah. And I want Mr. Shehadeh to establish the
7 date of that invasion so the jury can tie them together to show
8 that in fact there was an incursion into Ramallah shortly
9 before the Bauer bombing so they can see the credibility of the
10 assertion that they escaped during the invasion.

11 THE COURT: That is totally inappropriate for the
12 purpose of which you say you want to offer it. It is
13 inadmissible, and I am not going to let you slip in -- and
14 that's still my word -- slip in the fact that, and I must say
15 for at least a second time, the fact that the Israeli military
16 were all over the streets with their tanks and took over the
17 Palestinian territory so nobody could do any effective act.

18 If you have someone who investigated these individuals
19 in the police department who will come in here and say, I was
20 looking for this guy, I could not find this guy because I was
21 tripping over tanks, then you bring that person in here and you
22 let that person say that. We are not going to do what you're
23 attempting to do, and I know what you're attempting to do.

24 MR. HILL: For the record, let me finish the proffer.

25 He would testify that the Ramallah police station was

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1 destroyed in October 2000. He would testify that the PSS
2 headquarters was destroyed in early April 2002. He would
3 testify that as of the dates of the June 19, 2002 bombing and
4 the July 31, 2002 bombing, the Israeli army was still present
5 in Ramallah and preventing the PA police --

6 THE COURT: No reference to the Israeli army. I
7 cannot be any clearer than that. No reference to the Israeli
8 army.

9 Do we have an understanding about that?

10 MR. HILL: It's already in the--

11 THE COURT: Do we have an understanding about that?

12 MR. HILL: I hear, your Honor. There is a document
13 that plaintiffs put in evidence that talks about what happened
14 when the army invaded Ramallah. That's in evidence. All I
15 want to do is have the witness, who was in Ramallah, explain
16 the dates on which the Israeli army was there.

17 THE COURT: No reference to the Israeli army.

18 MR. HILL: I understand the court's ruling.

19 MR. ROCHON: The other parts, without referring to the
20 other parts, the dates that the destruction occurred, without
21 reference to the Israeli army, is important. Because the last
22 witness who testified about this did not give those earlier
23 dates. Mr. Shehadeh knows the earlier dates.

24 THE COURT: If this witness wants to say the police
25 station was destroyed on such and such a date, and the

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1 headquarters was destroyed on another date, you can have him
2 testify to those limited facts.

3 MR. HILL: Could he testify to the fact that a curfew
4 was imposed on those dates?

5 THE COURT: No.

6 MR. ROCHON: We will need to instruct the witness.

7 THE COURT: You can or you can send him home. We are
8 not doing this.

9 Just for illustration, you have absolutely no basis in
10 this record to argue that the police department could not and
11 did not do something that they were obligated to do because of
12 a curfew. You have no such basis in this record to say that.

13 Now, if you have got somebody who is the head of the
14 police department and says my guys were getting ready to arrest
15 Mr. X and 10:00 came and they told us, no, everybody has got to
16 go home, you bring that witness in. That's relevant testimony
17 for the jury to logically conclude that they couldn't do their
18 law enforcement responsibility because there was a curfew.

19 Think about what you're saying to me. You want to say
20 that because there was a curfew that all of the police
21 departments had to run into their houses and couldn't come back
22 out, and if they were getting ready to arrest somebody and that
23 is somebody who is relevant to this case, that they didn't
24 arrest because of the curfew. If you have somebody who wants
25 to say that, that they didn't arrest Mr. Barghouti or somebody

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1 else because they were getting ready to arrest him and then the
2 curfew was imposed and they were made to get off the street
3 rather than go down the street to arrest him first, then you
4 bring that person in.

5 But you and I both know there is no such testimony.
6 No one can testify to that. And you cannot imply that and try
7 to argue that simply because there was a curfew that somehow
8 the police department was dysfunctioned. There is no evidence
9 that way, and this guy just simply saying, oh, I had to go home
10 at 10:00 because the Israelis imposed a curfew does not do it.

11 MR. ROCHON: Yes, sir.

12 THE COURT: So you better figure out how much or how
13 little is worth putting this guy on for, and that's very
14 little. If you want to call him, fine, you can call him. But
15 those are the parameters. Again, it's not a real big secret
16 that this is my position.

17 MR. ROCHON: Here is what I want to do. Our case is
18 obviously speeding up because we have had legal discussions.

19 We had anticipated that we would play our deposition
20 designations on Tuesday, but I think given how things have
21 moved I would prefer to do it this afternoon.

22 MR. YALOWITZ: This is the first I am hearing.

23 THE COURT: Mr. Yalowitz, quiet.

24 Tell me what you want to do.

25 MR. ROCHON: Use our deposition designations. You

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1 have already ruled on them. It's just a question of reading in
2 the portions in which --

3 THE COURT: You want to do that this afternoon.

4 MR. YALOWITZ: I want --

5 THE COURT: Mr. Yalowitz, wait, if you want me to hear
6 from you. I am not going to tell you to wait again. I am
7 going to just tell you I am not going to hear from you at all.

8 Mr. Rochon, you have another witness.

9 MR. ROCHON: Right.

10 THE COURT: You can call one or two more witnesses.

11 MR. ROCHON: I would like to call Shehadeh.

12 THE COURT: You had two more witnesses.

13 MR. ROCHON: Yes.

14 THE COURT: I would like to put them on.

15 MR. ROCHON: Our goal is to have our expert at the
16 end. And I may not get my goal, but I do want to do it after
17 the deposition designations.

18 THE COURT: If he is here to testify, I assume he is
19 going to testify today.

20 MR. ROCHON: I want to do my deposition designations
21 first.

22 THE COURT: How long do you think that will take?

23 MR. ROCHON: About 40 minutes.

24 THE COURT: You can do your deposition designations,
25 then you call that witness, and then we can adjourn for the

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1 day.

2 MR. ROCHON: That is fine.

3 On the deposition designations, there is one issue we
4 did want to raise with the court. Remember you wrote
5 handwritten what was in and what was out on our designations.
6 You wrote it on what had been proffered by the plaintiffs and
7 then your clerk provided us a copy of the rulings.

8 On one of them, as to Fayyad, at page 61 and 62 --

9 THE COURT: I don't have the document I gave you.
10 Something I said was out you want in?

11 MR. ROCHON: No.

12 THE COURT: Something I said was in you want out?

13 MR. ROCHON: No. The plaintiffs, because they had
14 prepared it in their notes, had included that this particular
15 testimony opens the door to rebuttal testimony by Marcus. I
16 don't think the court ruled on that.

17 THE COURT: I haven't.

18 MR. ROCHON: I wanted to discuss that before we played
19 it.

20 THE COURT: What is the statement?

21 MR. HILL: We can play it. It's very short.

22 THE COURT: You can just read it.

23 MR. ROCHON: It's at page 61 and 62 of the Fayyad
24 deposition.

25 THE COURT: Tell me what it's about.

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1 MR. HILL: It's about what Intifada means.

2 THE COURT: Go ahead.

3 MR. HILL: The witness says that no one organized the
4 Intifada and he condemned violence.

5 THE COURT: Who condemned it?

6 MR. HILL: At the time, he was the prime minister.

7 MR. ROCHON: Fayyad.

8 MR. YALOWITZ: This is a combination.

9 THE COURT: OK. That's basically the subject matter.

10 MR. HILL: Another one is that the witness said he
11 condemned suicide terrorism.

12 MR. ROCHON: Then he condemned violence.

13 The plaintiffs have said that opens the door to
14 Marcus. I don't want to open doors if I can help it.

15 THE COURT: Mr. Yalowitz.

16 MR. YALOWITZ: This is what we talked about yesterday
17 about Ashrawi. If they want to come with public statements by
18 senior PA or PLO officials saying, I was against violence, here
19 is my statement of what I said at the time, they can't have it
20 both ways.

21 THE COURT: This isn't a public statement; this is an
22 examination.

23 MR. YALOWITZ: Quite frankly, I was trying to listen
24 to what he was saying. They represented to me this morning
25 that they were not going to offer depositions today. So it's

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1 the first I am hearing about since I was told. Since I walked
2 in the courtroom, they have been on again off again. I haven't
3 had a chance to go back and look at what they are doing. Once
4 again I am being ambushed.

5 THE COURT: You're not being ambushed. All you have
6 to do is make sure they are reading the portions that I wrote
7 on that piece of paper. You don't get to cross-examine the
8 deposition.

9 MR. YALOWITZ: I agree. Our view is when we had time
10 to go through it carefully and look at it, my reaction, and I
11 went through these myself, my reaction was that opens the door.

12 Now, they understand that's my reaction.

13 THE COURT: I am not convinced that that is the case.

14 MR. YALOWITZ: They can make an informed decision and
15 we will discuss it if they offer it.

16 THE COURT: I don't mean this the way Mr. Rochon took
17 it, but I know you would like to slip in Mr. Marcus.

18 MR. YALOWITZ: I don't want to slip him in at all.

19 THE COURT: I don't mean you're trying to do something
20 behind my back. I just mean you want to try to get it through
21 the backdoor when you can't get it in the front door.

22 So you want Marcus on. You would love to have the
23 jury hear Mr. Marcus and his opinions about whether or not
24 these guys are terrorists. We have discussed him. He was not
25 relevant then. He was not admissible then. He is not

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1 admissible now. These things don't make him admissible.

2 If you want to cross-examine any witness, and I let
3 you cross-examine the other witness about their in-court
4 statement about whether they were for or against terrorism, I
5 assume that if there is some cross-examination about this
6 witness which is inconsistent with that in his deposition, you
7 could read that portion if you want.

8 This witness has already been deposed. He is not here
9 live. What he said under oath at that point in time is what he
10 said. You offered his testimony, portions of his testimony.
11 They have right to offer other portions of his testimony. You
12 can't change the testimony.

13 MR. YALOWITZ: I understand the court's ruling on the
14 depositions. We went over that. I will say my recollection is
15 on Marcus, we had discussions. You didn't make a ruling
16 because I said, if I want to bring him I will apply to bring
17 him.

18 THE COURT: You may be right. I will take your word
19 for it.

20 MR. YALOWITZ: You have never ruled that he has got
21 inadmissible testimony. You certainly expressed views and we
22 have had discussions, and I am not saying I don't have an idea
23 of where your head is at, but there has not been a ruling that
24 he is inadmissible. I think if the defendants want to take
25 that risk they can make a reasoned judgment.

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1 THE COURT: I see no reason why Mr. Marcus should
2 testify. If you convince me otherwise before they rest or
3 after they rest, I will hear you. But if that's the only
4 rebuttal witness you have, and he would be a rebuttal witness,
5 then I don't anticipate we are going to have a rebuttal case.

6 MR. YALOWITZ: I understand where you are with Marcus.
7 Let's move through the depositions and get to the next witness.

8 THE COURT: I know where we are at this point. The
9 lawyers start to get a little antsy toward the end of the trial
10 because obviously this is it. So stay focused. Let's start
11 thinking about the jury. You have to start thinking about how
12 you're going to argue to the jury. This case is in. I
13 guarantee there is not a whole lot new that the jury is going
14 to learn from now until next week.

15 MR. YALOWITZ: We are ready to go.

16 THE COURT: My sense of the jury, they are ready to
17 hear from you. They don't want to hear a whole bunch of
18 repetitive stuff or sit there while you come up to the sidebar
19 and argue about the form of a question.

20 Let's take five minutes. Let's prepare to do this
21 witness. Let's prepare to do the deposition testimony. Let's
22 prepare to do the witness after that so we can limit as much of
23 the time today and we can talk about jury instructions and we
24 can limit as much time as we need to use on Tuesday.

25 MR. ROCHON: I don't think we will finish the expert

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1 today, but I do want a lot some time --

2 THE COURT: I am hopeful that we might.

3 (Recess)

4 MR. ROCHON: I was still instructing the witness.

5 THE COURT: You need a couple of more minutes.

6 (Pause)

7 THE COURT: Let's get the jury.

8 (Continued on next page)

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(Jury present)

THE COURT: Mr. Rochon, would you call the defense's next witness.

MR. ROCHON: We call what will be a relatively brief witness, Raja Shehadeh.

RAJA SHEHADEH,

called as a witness by the defendants,

having been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. ROCHON:

Q. Sir, would you please tell us your name.

A. My name is Raja Shehadeh.

Q. Mr. Shehadeh, where do you live?

A. I live in Ramallah.

Q. We have heard a lot about that. Ramallah is in the West Bank?

A. Yes.

Q. How long have you lived there?

A. I have lived there all my life.

Q. I hate to do this to you, but how old are you?

A. I am 63.

Q. What is your job?

A. I am a lawyer and a writer.

Q. Just if we could get a real brief background from you, please. Where did you go to law school?

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Shehadeh - direct

1 A. I studied law in London.

2 Q. At what school?

3 A. At the College of Law, and I did examinations and became a
4 barrister of law.

5 Q. After you became a lawyer, have you practiced law?

6 A. I have been practicing law since 1979.

7 Q. I take it since you have been living in Ramallah that's
8 where you practice law?

9 A. This is where I practice law, in Ramallah.

10 Q. You said you are also a writer?

11 A. I am a writer.

12 Q. We are not going to get into all of your books. How many
13 have you written?

14 A. I have published 14.

15 Q. I guess for a writer the question is not how many you have
16 written but how many you have published.

17 A. Sometimes you write and it's not published.

18 Q. When was your most recent book published?

19 A. Tomorrow is the publication date of my most recent book.
20 It's called Language of War, Language of Peace: Palestine,
21 Israel and the Search for Justice.

22 Q. When was your first book written?

23 A. 1982. It was called The Third Way.

24 Q. Are you married?

25 A. I am married. I have a wife.

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Shehadeh - direct

1 Q. Do you have extended family that also lives in Ramallah?

2 A. My brother lives in Ramallah and my mother and father lived
3 in Ramallah.

4 Q. I am going to take you back, if I could, to the period of
5 2000 to 2004. I have actually brought you all this way just to
6 ask you a couple of questions.

7 A. So be it.

8 Q. Did you know where the Ramallah police station was located
9 in the beginning of the year 2000?

10 A. I went to school at the American Quaker School and the
11 Ramallah police station is right next to the school I studied
12 at. It's an old building.

13 Q. Can you tell us, sir, the Ramallah police station, what its
14 condition was in October of 2000?

15 A. On October 12, it was destroyed and its condition became
16 that it was leveled, completely leveled.

17 Q. Was any part of the structure remaining standing and
18 operable after October 12, 2000?

19 A. After it was leveled, there is nothing left.

20 Q. My second question: Are you aware of the location in the
21 beginning of 2002 of the PSS headquarters?

22 A. Yes, I am.

23 Q. Where was the PSS headquarters located at the beginning of
24 2002?

25 A. It was located in a suburb of Ramallah, which is adjacent

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Shehadeh - direct

1 to Ramallah, which is called Beitunia.

2 Q. You said that was a suburb. How close is Beitunia to, say,
3 downtown Ramallah?

4 A. A few minutes drive.

5 Q. You said that the headquarters of the PSS was there at the
6 beginning of 2002?

7 A. That's right.

8 Q. Can you tell me, please, and tell the jurors more
9 importantly, what the condition was of the PSS headquarters in
10 April of 2002?

11 A. It was heavily destroyed on April 2.

12 Q. When you say heavily destroyed, can you describe its
13 appearance after that?

14 A. Toppled. The building was toppled. The roof was
15 collapsed.

16 Q. Was there any other damage that you saw?

17 A. Extensive damage.

18 Q. Thank you for coming here, sir.

19 MR. ROCHON: I have no further questions.

20 THE COURT: Mr. Yalowitz, any questions?

21 MR. YALOWITZ: No questions.

22 THE COURT: Thank you, sir. You can step down.

23 (Witness excused)

24 MR. ROCHON: Next we have some deposition designations
25 that we are going to present to the jury, if we can.

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"Abu Libdeh"

1 THE COURT: Are we doing this by video or doing it by
2 reading?

3 MR. ROCHON: Some of each. One from column A and one
4 from column B. Two videos, one to read. I will let Mr. Hill
5 decide which order he wants to present it.

6 MR. HILL: Why don't we start with the reading of the
7 deposition of Hassan Abu Libdeh.

8 THE COURT: Tell us how you want to conduct it.

9 MR. ROCHON: We have a colleague who will be the
10 reader.

11 MR. HILL: Could we put the picture of Mr. Abu Libdeh
12 up on screen so the jury can be reminded?

13 THE COURT: And your name is?

14 THE WITNESS: Andrew Wise.

15 THE COURT: Mr. Hill.

16 MR. HILL: This is portions of the deposition that
17 were read during the plaintiffs' case, additional portions that
18 were read during the plaintiffs' case.

19 THE COURT: All of these depositions are depositions,
20 portions of which the jury has already heard?

21 MR. HILL: No, sir. These are portions which the jury
22 has not heard.

23 THE COURT: I misstated it. All of these depositions
24 are depositions that the jury have heard some testimony from.

25 MR. HILL: In the plaintiffs' case, yes.

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"Abu Libdeh"

1 THE COURT: These are not new people. These are the
2 same people but additional designations.

3 MR. HILL: Yes, your Honor.

4 MR. YALOWITZ: Can we just get a representation from
5 the defendants of what they are going to read so that we can
6 follow along.

7 THE COURT: I assume you're going to read exactly what
8 we all discussed previously.

9 MR. HILL: Yes, your Honor.

10 THE COURT: Anything more or anything less?

11 MR. HILL: Not with respect to this one. Less with
12 respect to the others.

13 THE COURT: Why don't you read this one. I think they
14 know about this one and then you can let them know how you are
15 going to read the others.

16 MR. HILL: Let's begin on page 7 of the transcript.

17 "Q. When did you first begin to work for the Palestinian
18 National Authority?

19 "A. I started working for the Palestinian National Authority
20 in the first day the Palestinian Authority was declared in the
21 year 1993."

22 THE COURT: Could you put the mic a little closer to
23 you.

24 "Q. Where were you born?

25 "A. I was born in the village of Arabba in the second sector

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"Abu Libdeh"

1 of Jenin.

2 "Q. Where did you grow up and do your elementary and high
3 school schooling?

4 "A. I went to elementary school in the village of Arabba and
5 then I went to go to school in Jordan, in Amman, and then I
6 went back to the city of Jenin to high school. And then I went
7 from Jenin to Ramallah to study in the University of Birzeit."

8 MR. HILL: Page 9.

9 "Q. Did you receive your degree from that university?

10 "A. My first degree, yes.

11 "Q. What was your first degree? A bachelor's?

12 "A. I got a first degree in math.

13 "Q. Did you continue schooling directly or did you go to work
14 before returning to school?

15 "A. I worked for a year in the University of Birzeit, and then
16 I travelled to the United States and I received a second degree
17 from the University of Stanford. And then I went back for two
18 years to the University of Birzeit and went back to the United
19 States and completed a doctorate in the University of Cornell
20 in the year '88.

21 "Q. So you have a master's degree from Stanford University in
22 California, and a doctorate from Cornell University in New
23 York, is that right?

24 "A. Yes."

25 MR. HILL: Page 10.

F2B8SOK3

"Abu Libdeh"

1 "Q. You have also served as a research assistant and lecturer
2 at Cornell University, isn't that correct?

3 "A. Yes."

4 MR. HILL: Page 24.

5 "Q. In that context, and without belaboring the point, tell
6 the court, please, generally the history as you understand it
7 of the establishment of the Palestine Liberation Organization
8 and how it, as you observed it, came to be the negotiator in
9 the establishment of the Palestinian National Authority?

10 "A. The Palestinian Liberation Organization was created by
11 Arab League in 1964 to represent the Palestinian people, and
12 the Arab League in 1974 voted unanimously that the PLO is the
13 sole, legitimate representative of the Palestinian people.

14 "In view of this voting, the Palestine Liberation
15 Organization represented to the best of its ability the
16 interest of the Palestinian people, and when the negotiation
17 started we were chosen, myself and other delegates, to
18 negotiate on behalf of the PLO the organization being the sole,
19 legitimate representative of the Palestinian people.

20 "Q. Were you, from a history point of view, historical
21 perspective, were you at any time prior to 1983 active in any
22 capacity with the Palestine Liberation Organization prior to
23 the time that you came on to the negotiating committee that
24 resulted in the establishment of the Palestinian National
25 Authority?

F2B8SOK3

"Abu Libdeh"

1 "A. The PLO does not have a register of, quote, members,
2 especially at that time those who resided in the West Bank or
3 in Gaza. But we all Palestinians recognize that the PLO is the
4 sole, legitimate representative of the Palestinian people and
5 being one of them, I was one of those represented by the PLO.

6 "Q. Did you hold any position at any time with the PLO prior
7 to the time that you came on to the negotiating committee that
8 led to the establishment of the Palestinian National Authority?

9 "A. No."

10 MR. HILL: Page 27.

11 "Q. At any time have you ever been affiliated with any
12 particular political party or political movement within
13 Palestinian society?

14 "A. Yes. As a member of Fatah organization and many NGOs.

15 "Q. In what year did you first become affiliated with Fatah?

16 "A. 1973 as a member."

17 (Continued on next page)
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F2BTSOK4

"Abu Libdeh"

1 "Q. And have you continued your membership in Fatah
2 continuously from that time until now?

3 "A. Yes."

4 MR. HILL: Page 30.

5 "Q. Please tell the Court whether or not prior to
6 September 13, 1993 the Palestinian National Authority existed
7 as entity or an organization?

8 "A. It did not exist."

9 MR. HILL: Page 31.

10 "Q. And what is it that occurred, sir, to cause and permit the
11 creation of the entity known as the Palestinian National
12 Authority?

13 "A. The successful negotiations between the Palestine
14 Liberation Organization and Israel led to the signing of the
15 Declaration of Principles, and then later on to the signing of
16 the Oslo agreements, and this is the basic regulatory
17 foundation for the Palestinian National Authority.

18 "Q. Would you describe the legal entity of the Palestine
19 National Authority as being an organization, a non-governmental
20 organization, a corporation, or what, if you know? And
21 understand your expertise is not in legal matters, but I would
22 like to know what is your view since you're here as the
23 designated representative of the Palestine National Authority.

24 "A. The PNA is a legal structure which was born as a result of
25 the successful negotiations between the PLO and Israel, and it

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"Abu Libdeh"

1 is governed by its basic law and the various subsidiary
2 sectoral laws and the binding principles of the negotiated
3 agreements. The reference for its work, its functions, is the
4 Oslo agreements and the various laws that have been put
5 together and approved by the Palestine Legislative Council,
6 which is how this entity works."

7 MR. HILL: Page 33.

8 "Q. Please, Dr. Abu Libdeh, explain to the Court the role of
9 the Palestine Liberation Organization in the Palestinian
10 National Authority after the establishment of the Palestinian
11 National Authority on September 13, 1993.

12 "A. There is no direct role the PLO plays in the functions of
13 the PNA. The PNA is an organ created as a result of
14 negotiations, bound by the agreements with Israel, and the laws
15 that have been established since then, and bound also by the
16 political program of the PLO being the sole legitimate remember
17 active of the Palestinian people entering into agreements with
18 Israel. All of the agreements signed with Israel were signed
19 by the PLO on behalf of the Palestinian people, including those
20 agreements creating the Palestinian National Authority."

21 MR. HILL: Page 35.

22 "Q. So we understand then that the Palestinian National
23 Authority, otherwise referred to as the PNA or PA, did not
24 exist prior to the signing of the documents on the White House
25 lawn on September 13, 1993, is that correct?

F2BTSOK4

"Abu Libdeh"

1 "A. Correct.

2 "Q. And when you use the term Oslo Accords, to what were you
3 referring, please, sir?

4 "A. In general, Oslo Accords refers to all documents signed
5 between the PLO and Israel, and specifically Oslo I, which was
6 signed in 1994, and Oslo II, which was signed in 1995.

7 Q. Is there a difference, sir, if you would please explain to
8 the Court, between what was signed on the White House lawn on
9 September 13, 1993 and what you now referenced as the Oslo
10 Accords and Oslo I and II?

11 A. The first one, the DOP, the Declaration of Principles, is
12 the framework agreement between Israel and the PLO. Oslo I was
13 phase one of the detailed arrangements reflecting the agreement
14 in 1993, and Oslo II is further details of this agreement. The
15 first one was referring to, and in the phase one of Oslo I was
16 referring to arrangements for Gaza and Jericho, and Oslo II was
17 referring to the whole of the West Bank and Gaza."

18 MR. HILL: Page 42.

19 "Q. Although the Declaration of Principles of September 13,
20 1993 created the Palestinian National Authority, do I
21 understand from your testimony that in order for it as a entity
22 to be able to grow so it could function on behalf of the
23 Palestinian people, various institutions and infrastructures
24 had to be created?

25 "A. Correct.

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1 "Q. Now explain to the Court how long the process of
2 establishing institutions and infrastructures for the
3 Palestinian National Authority went on during that time period,
4 because, of course, common history reflects that Prime Minister
5 Dr. Salam Fayyad speaks even today about infrastructure and
6 institutions. So explain to the Court, please, the growth and
7 development of the infrastructure and institutions from
8 September 1993 forward, if you would, please, sir.

9 "A. The signing of the Declaration of Principles opened the
10 way for completing the institutional arrangements, to fund
11 those institutions that will lead to the development of the
12 services that were not attempted by the occupation, and to
13 strengthen those that will be transferred to the Palestinian
14 Authority upon the signing of the Oslo I and Oslo II. So the
15 process, first of all, there is nothing in history that says
16 from the day one to day X this thing is created, this is a
17 process, but the bulk of the process probably took through
18 1996."

19 MR. HILL: Page 45.

20 "Q. Dr. Abu Libdeh, did the Palestinian National Authority as
21 an entity sign the Oslo I agreements in 1994?

22 "A. No.

23 "Q. Which parties signed that agreement?

24 "A. That agreement was between the PLO and Israel. This was
25 signed by the PLO and Israel."

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MR. HILL: Page 50.

"Q. In relation to the civil administration transfer of authority from the State of Israel to the Palestinian National Authority over the West Bank in Oslo II, please tell the Court whether or not geographic lines or definitions were established as it relates to the areas geographically that were transferred for civil administration from the State of Israel to the Palestinian National Authority.

"A. In Oslo II the West Bank was divided into three zones. One was called Zone A, where the Palestinian Authority was assigned full authority functions and responsibilities, including issues relating to security matters, the public order in particular, and those areas where the city centers of the West Bank. This is one zone.

The second zone was designated as Area B, which refers to most of the remaining populated areas, and in these areas, designated as B, the Palestinian Authority was assigned the functions and responsibilities in the civil spheres, that is to say, to serve the people in civil matters with an overriding security responsibility of Israel for Israel.

And the remaining areas of the West Bank were characterized as Area C where the Palestinian Authority had no responsibilities or authorities."

MR. HILL: Page 82.

"Q. And was there a legislative body in existence for the

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1 Palestinian National Authority for the time period 2000 to
2 2005?

3 "A. Yes.

4 "Q. What was the name of that legislative body?

5 "A. The Palestinian Legislative Council."

6 THE COURT: Page 87.

7 "Q. So stepping back for a moment to the time period until the
8 death of the late Yasser Arafat, tell the Court, if you would,
9 who had elected Yasser Arafat as the president of the
10 Palestinian Liberation Organization after its creation?

11 "A. Yasser Arafat ran for office on January 20, 1996, and he
12 won the elections to the office of the president of the
13 Palestinian Authority in 1996.

14 "Q. And at the time that Yasser Arafat ran and became
15 president of the Palestinian Authority in 1996, was he then
16 serving as the president or the head of the Palestine
17 Liberation Organization?

18 "A. Yes.

19 "Q. Did he continue in that position?

20 "A. Yes.

21 "Q. Was he also the head of Fatah?

22 "A. Yes.

23 "Q. And did he continue in that position?

24 "A. But these three different organizations each had its own
25 governance charter modalities of electing to office. These are

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1 two, three different entities. So yes, he happened to be in
2 each of those, but he assumed the office in each of those as a
3 result of a process that is limited to each of those.

4 "Q. All right.

5 "A. Independent of that."

6 MR. HILL: Page 100.

7 "Q. Let me ask you whether or not during the time period 1999
8 until the death of the late Yasser Arafat in 2004, he
9 maintained a separate office or headquarters for his
10 responsibilities as the head or chairman of Fatah as
11 distinguished from his responsibilities as the president of the
12 Palestinian National Authority.

13 "A. Fatah is run by a body called the Central Committee, and
14 this central committee is composed of 18 members, has its own
15 headquarters, and Chairman Arafat is the chair of that. So the
16 headquarters of Fatah is the place where the Central Committee
17 has its own headquarters.

18 "Q. And at the Central Committee headquarters of Fatah for the
19 time period 1999 through November 2004 when Yasser Arafat
20 passed away, did the Central Committee of Fatah have an actual
21 address, offices, and buildings for the Central Committee of
22 Fatah?

23 "A. Yes."

24 MR. HILL: Page 105.

25 "Q. For the same time period, from 2000 through 2004, please

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1 tell the Court whether or not any separate offices were
2 maintained -- and by "offices," I'm referring to physical
3 headquarters -- for the Palestinian Liberation Organization.

4 "A. Yes.

5 "Q. Did they have a separate office in Ramallah?

6 "A. They had two offices, one in Gaza and one in Ramallah.

7 "Q. And were they in separate buildings from the offices of
8 Fatah?

9 "A. Yes.

10 "Q. Were they in separate buildings from the offices of the
11 Palestine Liberation Organization?

12 "A. Yes."

13 MR. HILL: Page 108.

14 "Q. In your capacity as the designated representative of the
15 Palestinian National Authority, please explain how, during the
16 time period between 2000 through 2004, Yasser Arafat, as the
17 president of the Palestinian National Authority, functioned in
18 his position simultaneously as the president of the Palestinian
19 National Authority and the chairman of the Central Committee of
20 Fatah and the chairman of the Executive Committee of the PLO.

21 A. These are three separate institutions. Each has its
22 governing body, the Central Committee for Fatah, the government
23 in terms of its ministries and so on, and the Executive
24 Committee of the PLO. He is -- he was the chairman of this
25 Executive Committee because he chairs the Central Committee of

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1 Fatah, which is a member of the PLO, who happened to be the
2 largest member of the political parties. And based on this
3 being the largest member of the political parties, they had the
4 right to nominate the chairman of the Executive Committee of
5 the PLO, and they nominated the chairman of Central Committee
6 of Fatah.

7 As far as the Palestinian National Authority is
8 concerned, Fatah, who is a member of the PLO, run for
9 elections, and they nominated him for office, and he managed to
10 get the necessary votes to become the chairman of the
11 Palestinian Authority.

12 So basically these three separate institutions, each
13 with its independent governance, had only one thing in common,
14 the chairman, but each has its own governance, policies, work,
15 schedule, and all the objectives, whatever it is, but this is
16 the way he became the one."

17 MR. HILL: Page 111.

18 "Q. Dr. Abu Libdeh, is as the designated representative the
19 Palestine Liberation Organization, can you please describe to
20 us, to the extent of your knowledge and observations, the
21 manner in which Yasser Arafat functioned during the course of
22 his business tenure as the common chairman of the Palestinian
23 Liberation Organization, chairman of Fatah, and president
24 simultaneously of the Palestinian National Authority.

25 "A. Based on my own experience, Yasser Arafat wasn't

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1 functioning as a CEO of each of them, he was functioning as
2 something like the chairman of the board. So he wasn't really
3 doing the business of managing the micro level functions of
4 each of these independent entities, but rather than having a
5 more remotely style of management, which could be characterized
6 as the closest you can get to the concept of having -- being
7 the chairman of the board, which is the case, and that the
8 executive functions are carried out independently within each
9 of the organizations.

10 "Q. From the time period 2000 through 2004, can you please
11 describe, as the designated representative of the Palestinian
12 National Authority, the manner in which the PA, the PLO, and
13 Fatah conducted the business of the Palestinian National
14 Authority for the time period 2000 through 2004?

15 "A. The business of the PNA was conducted of the PNA. Fatah
16 has no direct management or administrative relationship with
17 the PNA. Fatah is a political organization, a member of the
18 PLO, part of the platform of the PLO who has its policies and
19 strategic objectives, and whose chairman, being the president
20 of the PNA, elected president of the PNA, is making sure that
21 the PNA is in line politically with the policies and the --"

22 MR. HILL: Page 113.

23 "A. So there was never and still there is no administrative
24 relationship horizontally or vertically between Fatah and the
25 PNA. The only relations or only link with Fatah and the PNA is

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1 the Fatah, being a member of the PLO, supports the government
2 of the PNA as long as this government is implementing the
3 policies, the strategic policies of the PLO.

4 That is to say, today, if Fatah is not happy with the
5 government, they do not -- or at the time they do not ask the
6 government or request the government or instruct the government
7 because there is no relationship. The PNA is accountable --
8 the executive order, the executive branch of the PNA is
9 accountable to the head of government who is accountable to the
10 Legislative Council, which is part of the PNA."

11 MR. HILL: Page 117.

12 "Q. The designated representative of the Palestinian National
13 Authority, would you agree with the statement that the PA was
14 made accountable to the Executive Committee -- to the PLO
15 Executive Committee?

16 "A. The PA?

17 "Q. Yes.

18 "A. The PLO Executive Committee, being the sole or the
19 executive committee of the PLO, the sole legitimate
20 representative of the Palestinian people, who entered into
21 interim contractual agreements with Israel, has found the PA in
22 accordance with the agreements. And in regard, the PLO has the
23 full authority to dismantle the PNA or to instruct the PNA, in
24 terms of alignment with the political program objectives and
25 policies of the PLO, but no executive authority of the PLO over

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1 the PNA."

2 MR. HILL: Page 119.

3 "Q. So can you please explain, for the time period of 1999
4 through 2005, whether the Palestinian National Authority was
5 responsible for the negotiations with the State of Israel, or
6 whether those responsibilities were in the authority of the
7 Palestinian Liberation Organization.

8 "A. Please define the word 'negotiations.'

9 "Q. Communications and discussions about issues relating to
10 governance and other functions within the area of the West Bank
11 and Gaza.

12 "A. On issues relating to the exercise of the functions and
13 responsibilities of the PNA, in accordance with the Oslo
14 agreements, all communications with the Israeli side is done by
15 the PA. Other communications relating to the final status and
16 the fates of the Palestinian territory and the fate of the
17 future relations with Israel, that is the function of the PLO."

18 MR. HILL: Page 152.

19 "Q. Dr. Abu Libdeh, please tell the Court what was or is the
20 'Second Intifada' and the meaning of the words 'Second
21 Intifada.'

22 "A. The word "intifada" has no English translation. If you
23 look at Webster's or whatever, it comes as is. It is
24 universally accepted as one word in all languages. It
25 describes the popular actions of the Palestinian public against

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1 the continuation of the occupation, and now it is used to refer
2 to any actions of protests or objection to something if it is
3 of popular nature."

4 MR. HILL: Page 181.

5 "Q. As you recall, Dr. Abu Libdeh, for the year of 2002, was
6 there any particular ministry of the Palestinian National
7 Authority government with which Marwan Barghouti was
8 affiliated?

9 "A. No.

10 "Q. To the best of your knowledge, sir, did Marwan Barghouti
11 in the year 2002 perform any functions for the Palestinian
12 National Authority except in his capacity as a member of the
13 Palestinian Legislative Council? And I ask you this as the
14 designated representative of the Palestinian National
15 Authority.

16 "A. No.

17 "Q. And as the designated representative of the PA, you're
18 telling the Court that Marwan Barghouti had no other
19 responsibilities on behalf the Palestinian National Authority
20 in March of 2002 except as a member of the Palestinian
21 Legislative Council?

22 "A. To the best of my recollection."

23 MR. HILL: Page 185.

24 "Q. Tell the Court whether or not, as the designee of the
25 Palestinian Authority, Marwan Barghouti is continuing even to

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1 the current time as a member of the Palestinian Legislative
2 Council?

3 "A. Yes."

4 MR. HILL: Page 200.

5 "Q. For the time period 2000 through 2005, to what extent did
6 the Palestinian National Authority coordinate its activities
7 with the PLO in relation to issues of civil administration,
8 finance, foreign affairs, and to the extent you can answer it,
9 security?

10 "A. The PLO has no business in dealing with the day-to-day
11 affairs of the Palestinian population of West Bank and Gaza.
12 The PLO represents the whole of the Palestinian people
13 everywhere. The civil affairs of the population of the West
14 Bank and Gaza is managed by the PA on the basis of the mandate
15 given by the Oslo Agreements, and the program that the cabinet
16 and the vote of confidence on that basis. And this is also
17 true for finance, with one exception. In the finance matters,
18 and in the context of the reforms that were approved by the
19 Legislative Council in 2002, it was internationally agreed that
20 the single treasury account is established, and that the direct
21 authority of the finance ministry where the budget is executed
22 out of that ministry. The foreign affairs is not a portfolio
23 which is part of the mandate of the PA. The foreign affairs is
24 a function of the PLO. And the security, the internal
25 security, is under the direct mandate of the PA."

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MR. HILL: Page 228.

"Q. Why, as part of the Oslo Agreements, was the Palestinian National Authority required to be accountable to what you have described as the policies of the Palestinian Liberation Organization? What was the concern that led to that?

"A. Because the PLO was committed to two-state solution and to the program which was approved in the year 1988, which is a program based on reaching a solution through negotiations. The PA, which is a subsidiary which was created by these agreements, cannot really invent policies that are contrary to the spirit and contractual arrangements between the PLO and Israel. Therefore, the PNA cannot, out of the blue, come out and let's say withdraw recognition of Israel or announce policies that are contrary to the policies and political program of the PLO, which is based on the work toward the two-state solution through negotiations.

"Q. I think you mentioned earlier also that many of the members of the Palestinian National Authority were elected, is that correct?

"A. Yes.

"Q. The legislative counsel was elected?

"A. They were elected directly by the people.

"Q. There were presidential elections?

"A. Through the presidential and legislative elections. We had one in 1996 where the president was elected and legislative

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1 council, and we had another one in 2005 where the president was
2 elected after the death of Yasser Arafat, and then in 2006 we
3 had legislative elections.

4 "Q. And under Oslo, what would happen if a political party ran
5 for election on a party that was counter to the principles of
6 Oslo?

7 "A. They cannot."

8 MS. MACHNES: Your Honor, that concludes the reading
9 the deposition of Hasan Abu Libder.

10 THE COURT: Could we do one more and go to one
11 o'clock?

12 MR. ROCHON: The next one is a video, and I think we
13 have it queued up.

14 MR. HILL: At this time we'll show the video
15 deposition of Hussein Al-Sheikh. The jury previously had
16 portioned of his testimony read to them, but this is the actual
17 video.

18 (Video recording played)

19 MR. ROCHON: That's it, Judge.

20 THE COURT: Okay. I kept you over. I was trying to
21 move this along. Let's take lunch.

22 Ladies and gentlemen, don't discuss the case. Keep an
23 open mind. I ask you to be back at 2:15 and we'll get started
24 a little early. I'll see you at 2:15.

25 (Luncheon recess taken)

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AFTERNOON SESSION

2:20 p.m.

(Jury not present)

THE COURT: Are we ready to continue?

MR. YALOWITZ: Yes, sir.

MR. ROCHON: Here is what I would like to do. I would like to give you an idea of what I think our itinerary is going to be or ought to be.

We have about 12 minutes of video. Then what I was going to do this weekend was to make the decision as to whether or not I had evidence from Mr. Robinson that was not going to violate the Court's directives. Glenn Robinson is our expert.

Here is where I am. As I understand the Court's rulings, I think all that I want from him I think might fall afoul of your rulings, and that will cause me to not call him.

THE COURT: In all these weeks I have accomplished something.

MR. ROCHON: As I like to say, I don't know how to play electric guitar and the only way I can earn a living is by being a lawyer.

I am going to make a decision today. I am not asking you to have us wait to Tuesday to make that decision, but I would like to put on the record what I would like him to testify to, not to irritate the court --

THE COURT: Despite what it seems like, I don't get

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1 irritated, and everyday is a new day.

2 MR. ROCHON: I have witnessed that's the Court's view.
3 I have no quarrel with that.

4 So that's where we are.

5 What I am going to ask the Court for, the witnesses
6 from Palestine, we have been working their visa issues
7 throughout. We are going to finish a little early. I am going
8 to ask the Court to give us the indulgence to call them on
9 Tuesday because they are not here. That has been a complicated
10 issue. So I would ask for that leeway. We have redactions to
11 talk about, maybe, although that's not my expertise, it's Ms.
12 Machnes and Mr. Satin. We have instructions to talk about.

13 MR. YALOWITZ: He is wasting time.

14 MR. ROCHON: For the jury's sake, what I would be
15 asking the Court to do is play the video. If I am wrong and I
16 persuade you that I can call Robinson, we would have to put him
17 on today. I don't want to play a game where I make these
18 arguments and then change my mind later. I can imagine my
19 colleague in front of me would be quite upset at that.

20 MR. YALOWITZ: What makes you say that?

21 MR. ROCHON: So that's where we are.

22 THE COURT: Let me just throw in another fact here.

23 I am in a situation that I have made a commitment with
24 the former mayor to speak at his class on Monday afternoon at
25 4:00 at Columbia.

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1 MR. ROCHON: Monday or Tuesday?

2 THE COURT: Tuesday at 4:00. I am trying to make a
3 decision whether at this late date I can cancel that or whether
4 or not we can still finish up what we need to do by about 3 or
5 so, and I can go ahead and meet that commitment. I would
6 prefer that.

7 MR. YALOWITZ: Let me make a suggestion. If they are
8 going to call Robinson, I think we have got to start him today,
9 and maybe we can finish him today. I have a few questions for
10 him. I met him. Maybe I will call him as a witness if they
11 don't want him. I understand why they may not want him. It's
12 not because of the rulings because of his opinions.

13 Let's get him done or as far as we can today. Mr.
14 Rochon and his team know that the redaction issue is not to
15 deal with Ms. Machnes on it because she doesn't know it. Ms.
16 Romeo knows it. She has been in the office and they can call
17 her any time they want. That is like a stalling thing. We are
18 not going to deal with that here in the courtroom, unless they
19 are ready to go on that, which it doesn't seem like they are.

20 I would like to get the jury back in the room --

21 THE COURT: I don't hear you disagreeing on any point
22 at this point. I thought that is what he just said.

23 What I anticipate, and I just need to know if there is
24 something that I am not anticipating, we are going to finish up
25 the deposition. We are going to figure out today whether

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1 Robinson is going to testify. If he is going to testify, he is
2 going to testify today. If he is not, we are sending him home.
3 Then I anticipate that from, what I remember or know, that we
4 only anticipate possibly the two witnesses with regard to the
5 document or some others.

6 MR. ROCHON: Four. They just complained about two.

7 THE COURT: We anticipate four more witnesses?

8 MR. ROCHON: I bet you we don't end up putting on four
9 more witnesses next week. You know as well as I do how these
10 things go.

11 THE COURT: I know how they can go, how they should
12 go, and I know how sometimes they don't go. I need to know
13 realistically from you how many hours of testimony do you
14 realistically think at this point. And I understand and I
15 don't want to say that you're playing coy with Mr. Yalowitz,
16 but it's a little late in the day for you not to have a pretty
17 good idea of how you're going to wind up this case. Nothing is
18 going to change except if you change it.

19 MR. ROCHON: The only thing that is going to change is
20 if I change my mind. I agree. I told you that these people, I
21 am getting them over here to eyeball and see if I am
22 comfortable with the testimony if I need it. And until I
23 eyeball a person and see how they are going to play, I don't
24 decide. In my experience in life, and where I think this case
25 is, I think my case will certainly rest on Monday, even with

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1 your obligation.

2 THE COURT: How many hours of testimony do you think
3 that realistically we would have to have anticipate to end
4 Tuesday?

5 MR. ROCHON: Three or four.

6 THE COURT: Three or four if you called all four
7 witnesses.

8 MR. ROCHON: These are really narrow issues. We are
9 not going to find out what the dog's name is or anything like
10 that. It's pretty targeted stuff.

11 THE COURT: At this point we have already talked
12 about --

13 MR. ROCHON: The two people on the letter.

14 THE COURT: Then that's what we are going to do.
15 How much more do you say of depositions?

16 MR. ROCHON: 14 minutes.

17 THE COURT: Do you want to talk about Robinson now?

18 MR. ROCHON: Yes.

19 THE COURT: Let's get rid of Robinson.

20 MR. ROCHON: There are things that he would say that
21 go to general incitement, the things you have kept out on both
22 sides. We obviously disagree with some of the rulings, but I
23 am not trying to reargue anything.

24 THE COURT: You want to both convince me to open up
25 the case so you can put in all of your incitement and they can

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1 put in all of their incitement?

2 MR. ROCHON: No. We want to keep it to the torts.

3 For instance, he has an opinion that some of these
4 most violent incidents occurred in reaction to two
5 assassinations by the Israelis at a time of a cease-fire. But
6 he has no specific knowledge of any of the incidents in that
7 sense. He is not a fact witness. So he has that testimony.

8 THE COURT: He may have a very legitimate opinion
9 about that, but that doesn't make it any more or less likely
10 that the PA and the PLO responded in the same manner that you
11 say individuals may have responded in light of that. So it
12 doesn't advance the issues in this case.

13 If it made the ordinary guy on the street upset and
14 angry, it probably made the president of the PLO and the PA
15 just as angry and upset. So that is not a basis for the jury
16 to determine who is responsible for the terrorist act. That's
17 my reaction to that.

18 MR. ROCHON: He would also testify that Arafat had
19 lost control of the street because they were so angry at the
20 failure to deliver a state and at the consequences of the
21 Israeli activities in the region and that therefore he had lost
22 commanding control.

23 THE COURT: I thought we have a little bit of that
24 already in this case.

25 MR. ROCHON: When I get near it, I notice the court

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1 doesn't like me to get too near it. The relevant thing for him
2 is to focus on the Israeli actions, which I know you have tried
3 to keep out.

4 THE COURT: As I say, the reason why he lost control,
5 again, doesn't advance one way or the other whether or not the
6 PA or the PLO was involved in the terrorist attack. He may
7 have lost control because he had a physical disease, or he may
8 have lost control because of what you say the Israeli
9 government did. But it doesn't advance the jury's assessment
10 of whether or not he, or people on his behest, or people who
11 took over control when he lost control, are still acting on
12 behalf of the PA or the PLO, if they were in fact involved in
13 the terrorist acts.

14 We have run out of a lot of hard facts. So let me
15 give you the, oh, well, if he, quote, in general lost control,
16 that somehow is the argument of why he couldn't have done it,
17 it doesn't work that way. You have given us the hard evidence
18 and now you guys are on the cloudy stuff here.

19 MR. ROCHON: In short, we realize that we are not
20 trying a failure to prevent case. We think some of the
21 plaintiffs' testimony, but certainly the testimony that he
22 would have to offer responds to this question of whether the PA
23 should have done more or whether the PA encouraged these
24 things; not these specific things, but just general sorts of
25 failure-to-prevent-type things. And that's what the court has

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1 made pretty clear we are not trying.

2 Then, finally, you did not allow me to ask so I would
3 never call Mr. Robinson to testify about whether the IDF's
4 incursion and the reports of what they found were influenced by
5 propaganda or political influence. I cross-examined or tried
6 to cross-examine Mr. Eviatar about that and you stopped me.

7 THE COURT: Again, I don't know why that makes it more
8 or less likely that the PA committed these terrorist acts.
9 It's more prejudicial than probative.

10 MR. ROCHON: Because I have been listening to you, we
11 think if he were to testify, that he would run afoul of your
12 rulings in these areas, and to the degree that he has other
13 limited testimony to give --

14 THE COURT: It's not worth it.

15 MR. ROCHON: And it would be hard to give that without
16 referring to those other things, and I think there would be
17 slippage and problems, and we would get into a place where you
18 have asked us not to get.

19 So unless I have persuaded you in this limited way
20 that those are appropriate topics for his testimony, I am going
21 to choose to not call him.

22 THE COURT: Do you want to say something, Mr.
23 Yalowitz?

24 MR. YALOWITZ: Look --

25 THE COURT: You could have said no.

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1 MR. YALOWITZ: Whether to call Mr. Robinson is up to
2 you and them. I am ready to call him. If they want to call
3 him, let's get him in here and get going.

4 MR. ROCHON: I want to call him for those things. If
5 he doesn't object, you're going to let me do it, I assume. I
6 hope.

7 THE COURT: If Mr. Yalowitz tells me to either
8 preclude his testimony because all of his testimony is
9 inadmissible, or let him testify and just preclude some of his
10 testimony, or just let you put him on up there and see how it
11 flies --

12 MR. ROCHON: What I don't want to have is where I have
13 told him what I want from him, and then we start picking it
14 apart in front of the jury, irritating you and them. That's
15 why I am doing it this way.

16 THE COURT: I try to see it from their perspective.
17 Mr. Yalowitz, what do you want me to do with Mr.
18 Robinson?

19 MR. YALOWITZ: I don't have a problem if they don't
20 call him.

21 THE COURT: I didn't ask you that.
22 Do you have a problem if they do call him? Do you
23 want me to preclude him from testifying?

24 MR. YALOWITZ: Fine.

25 THE COURT: Is that a yes?

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1 MR. YALOWITZ: Yes. Fine.

2 THE COURT: If he is to give testimony in those areas
3 that we just discussed, and that is the purpose for calling
4 him, no, he should not be called for those purposes and should
5 not be put on the stand to respond in that manner, regardless
6 of which questions he is responding to. So if you have
7 something else in a more limited fashion that avoids any of
8 that discussion, then you should call him for that limited
9 purpose and make sure that that limited purpose is an
10 admissible one.

11 MR. ROCHON: The other areas have been well covered.
12 Would you like more on Oslo?

13 THE COURT: I think the jury, we have all learned a
14 whole lot in the last few weeks. I think they are more
15 educated on this than most people walking the street.

16 Quite frankly, right now, also in fairness to both you
17 and Mr. Yalowitz, I went painstakingly through this deposition
18 and a lot of the stuff that you are still trying to call
19 witnesses to repeat is even being repeated in this deposition
20 transcript. We are beating a dead horse. It's time that the
21 jury gets this.

22 MR. ROCHON: I think the Fayyad one covers different
23 areas. It's at least shorter. And the court can tell the jury
24 that you denied my motion that they have popcorn while they
25 watch the video.

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1 THE COURT: I reserve decision on that.

2 MR. YALOWITZ: It's a joint motion.

3 So Robinson is out.

4 THE COURT: We are not going to have Robinson.

5 Does that mean the only thing we are going to do is
6 finish the deposition testimony and then we are going to
7 adjourn?

8 MR. ROCHON: Yes. The only other witnesses that might
9 be called in the defense case would be the four that we
10 referenced. There are no other witnesses.

11 THE COURT: At this point, as they say, going to the
12 likely and unlikely list, as Mr. Yalowitz received it, it is
13 likely that we are going to hear from the woman who wrote the
14 memo?

15 MR. ROCHON: Right.

16 THE COURT: And it's not as likely that we are going
17 to hear from the last two.

18 MR. ROCHON: Right.

19 THE COURT: And I have already indicated that if you
20 put on the woman who wrote the memo, unless you give me a
21 specific proffer that compels me at some point, or Mr. Yalowitz
22 withdraws his objection to the person who basically at this
23 point just received the memo and, as you said, didn't consider
24 it to be important enough to do anything with, this whole
25 debate about whether or not it was seized or not seized, it's

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1 irrelevant since he already made up his mind he wasn't going to
2 do anything with it. So I don't see why that is a relevant
3 debate here, because when he got it he said there is nothing
4 for me to do, and he put it aside and then it was seized.

5 My guess is we will have one, two or three witnesses,
6 which I would think we can either finish before lunch or by
7 3:00, and then I can keep my schedule and we can still have
8 some time this afternoon, the beginning of Tuesday and before I
9 have to leave to finalize the process, the jury instructions
10 and the verdict form, and what the issues are going to be and
11 how they are going to be presented to this jury.

12 I will ask you at some point to give me an estimate of
13 approximately how long you think you might be on summation. As
14 I always say, I usually do not find it necessary to put time
15 limits on the lawyers, but if you give me an estimate and begin
16 to go way beyond that, I will usually inquire about whether or
17 not you're almost done.

18 I have a basic philosophy that by the time I ask you
19 to sit down, you would have lost the jury long before that. I
20 am serious about that. As long as you're making your points
21 and not being repetitive and making extraneous irrelevant
22 arguments, I will let you do it. So I can start planning
23 basically how I can handle the jury in that process and what
24 they can expect.

25 I anticipate as early as Wednesday morning we are

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1 going to be going into summations.

2 MR. ROCHON: Right.

3 MR. YALOWITZ: Based on where we are in the case right
4 now, there are a couple of things that I am thinking about
5 doing on rebuttal. If I do them, it would be very short. I
6 would be addressing this business about Tirawi in a few
7 sentences, just to talk about the issue of when was he wanted
8 and when was he stopped being wanted and why.

9 THE COURT: Through what kind of a witness?

10 MR. YALOWITZ: Shrenzel.

11 THE COURT: One of your expert witnesses.

12 MR. YALOWITZ: Right. And foundationalizing a couple
13 of documents that we talked about during the defendants' case
14 that sort of became relevant. I am really thinking it's a half
15 an hour, something like that. I sort of wanted to get a sense
16 of your views about that.

17 THE COURT: We will talk about that and if you're
18 going to do that, be prepared to do that on Tuesday and we can
19 talk about whether or not it makes sense for you to be prepared
20 to do that or you can make a decision as to whether or not you
21 want to do that.

22 Anything else?

23 MR. ROCHON: We should bring the jury in and make them
24 happy.

25 THE COURT: Let's bring them in and they will be

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1 pleasantly surprised when we finish this and it's over.

2 (Jury present)

3 THE COURT: Mr. Rochon.

4 MR. ROCHON: Yes, your Honor. Good news and bad news.
5 We have one more video to play. That's the bad news. And the
6 good news is I think we will be done.

7 JUROR: One more video and done? I'm sorry.

8 THE COURT: When I say we are working out here to save
9 you time, I really mean it. We are moving efficiently. We
10 will talk about how we will plan for next week.

11 MR. ROCHON: The video is cued up and it's of Salam
12 Fayyad who was seen previously in another video in the
13 plaintiff's case and this is another portion of that same
14 deposition.

15 And Mr. Yalowitz agreed that we both move the court to
16 provide popcorn during videos.

17 MR. YALOWITZ: That's a joint motion.

18 THE COURT: You promised me you wouldn't embarrass me
19 by saying that.

20 Motion denied.

21 (Videotape played)

22 MR. ROCHON: That's the end of it.

23 THE COURT: Ladies and gentlemen, you have two
24 choices. You can sit around and wait for popcorn or you can
25 adjourn.

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1 So this is what we are going to do. Let me explain to
2 you where we are and what I think we are going to be doing next
3 week. As I said, we are going to adjourn today. We are not
4 going to pick up until Tuesday after the holiday. We are
5 coming to the end of the testimony next week. Obviously you
6 have given significant time and attention to this case.

7 Next week you move into what is the second phase and
8 very important phase for you, the summations, and I will
9 instruct you on the law and give you the case to begin your
10 deliberations next week.

11 So what I would like you to do is take the next few
12 days, get some rest, recharge your batteries. Be ready to
13 continue next week. I am hopeful and fairly confident that we
14 will finish the witnesses on Tuesday or Wednesday. If we
15 finish the witnesses on Tuesday or Wednesday, we will have the
16 summations or closing arguments of the lawyers on Wednesday or
17 Thursday. Then, after the closing arguments of the lawyers, I
18 will instruct you on the law and I will send you in to begin
19 your deliberations.

20 So that's what the schedule is. I am hopeful that you
21 will be in deliberating on this case before the end of the week
22 next week, even though it's only a four-day week. So that's
23 what we are planning on and working with the lawyers so we can
24 efficiently get to that point in the next few days and next
25 week.

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1 As I say, go home, get some rest, be ready to
2 continue. That's what we are going to do next week.

3 Once we start deliberations, I am going to start
4 ordering you lunch. So whatever period of time you deliberate
5 we will just send your lunches in and you can eat while you
6 deliberate or suspend deliberations and eat your lunch. But we
7 will take care of you and I will explain the process to you
8 once the case is given to you for your deliberations.

9 With that said, have a good weekend. I will see you
10 on Tuesday.

11 I am going to ask you to be here at 9:30 on Tuesday in
12 case we have more witnesses than I thought to wind the case up
13 so that we can start on time and get those witnesses done and
14 be ready to go ahead and proceed as quickly as possible to give
15 you the case.

16 Don't discuss the case. Keep an open mind. I will
17 see you on Tuesday.

18 Have a good night.

19 (Jury exits courtroom)

20 THE COURT: I want to take some time just for a few
21 minutes and then we can gear everything up in terms of what we
22 need to address in terms of the verdict form, the jury
23 instructions and the claims as they will be presented to the
24 jury.

25 First, I know, Mr. Yalowitz, you haven't had an

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1 opportunity to respond to the letter I received from the
2 defense with regard to proposed jury instructions that I
3 received from Mr. Rochon this morning.

4 Let me just tell you my reactions to it and then you
5 can further argue, either side, with regard to my initial
6 reaction.

7 With regard to the witness prep, I have no problems
8 taking that out. I don't know if Mr. Yalowitz has a strong
9 opinion or if he wants to think about it further. It was iffy
10 when I put it in in the first place whether or not we really
11 needed it. So unless there is a strong view one way or the
12 other, or there is a strong view to keep it in, I will take it
13 out.

14 MR. YALOWITZ: I will accept the defendants'
15 suggestion that there is no evidence that their witnesses have
16 been prepared.

17 THE COURT: OK.

18 MR. YALOWITZ: Let me think about it.

19 THE COURT: My inclination is just take it out. I
20 don't think there is an issue for you to decide.

21 The second one, with regard to the photographs, I have
22 no problem with just indicating they are photographs of
23 individuals and scenes. I am prepared to do that.

24 On the burden of proof, for the most part I agree that
25 the instruction that they asked, it's consistent with what the

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1 situation is. Obviously the burden hasn't shifted to the
2 defendant for any reason. The defendant has no burden with
3 regard to any of the issues.

4 Some of the language that I am choosing is a little
5 different than theirs but not much. For example, in number 3
6 at the beginning, page 29, where they want to substitute each
7 plaintiff, I have no problem with that. I put each individual
8 plaintiff has the burden of proving every element of his or her
9 claim by a preponderance of the evidence. I am not wedded to
10 that language.

11 Then on page 30, where it says, the fifth line down,
12 you must decide that issue against, I will add on, the
13 plaintiff on the issue you are considering is what I have,
14 rather than the party having this burden of proof.

15 Five more lines down: On the other hand, instead of
16 the party with this burden of proof, the plaintiffs need prove
17 no more than a preponderance so long as you find that the
18 scales tip, however slightly, in favor of the plaintiff. And
19 what the plaintiff claims is more likely true than not true,
20 then that element would have been proved by a preponderance of
21 the evidence. I think that's consistent with what they were
22 asking for. That's my view of it.

23 I will give Mr. Yalowitz an opportunity, if he has a
24 different view, to be heard further on that before I make the
25 final decision.

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1 With regard to the damages, I don't have any problem
2 making an order change, which would basically be, one, what is
3 on -- I will work a little backwards.

4 MR. YALOWITZ: I was hoping you put damages as the
5 very first thing.

6 THE COURT: I am sure you would.

7 The multiple claims and multiple defendants, I am
8 going to move that up in front of damages. I may move it up
9 even further. I am trying to figure out where that should go.
10 I think I threw it in there as an afterthought. So it will be
11 clearly ahead of damages but may even be ahead of the
12 substantive instructions, but let me just think about that.

13 Also, I am going to move forward the causation element
14 on 59 and 60. I understand what their position is. And move
15 back the damages instructions until after the causation
16 instruction. I think that is consistent with how they have
17 reacted to that.

18 I want to give Mr. Yalowitz an opportunity to give me
19 some guidance as to what he thinks about the next issue. I
20 have to pull out what I think is an appropriate -- well, no,
21 let me stop. I am not there yet.

22 With regard to proximate cause, I am prepared to make
23 a minor change at this point, and I don't know whether or not
24 Mr. Yalowitz will have an objection to that or that would
25 satisfy the defense given their request. Not fully what the

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1 defendants have asked for.

2 If you look at page 54, at the end of the first full
3 paragraph, that last line says: If you decide that a plaintiff
4 is entitled to recover, only if you decide that the plaintiff
5 is entitled to recover, will you consider, I am going to say
6 his or her measure of damages.

7 But with regard to the next paragraph, addressing the
8 issue with regard to proximate cause, consistent with the way
9 the other language that I give, what I think is appropriate at
10 this time, and you can convince me something more or less
11 should be done, but I think that paragraph should read: If you
12 find that plaintiff is entitled to recover from defendant PA
13 and/or defendant PLO, you must render a verdict in a sum of
14 money that will justly and fairly compensate that plaintiff for
15 all injuries and disabilities he or she sustained from the
16 terrorist attack.

17 That's the language that I think is appropriate. As
18 far as I am concerned, once they find liability, any damages
19 that were sustained from the terrorist attack I believe is
20 appropriate for the jury would be a basis for the jury to
21 attribute to whatever defendant, one or both that they find.

22 MR. YALOWITZ: I want to look at it. But my initial
23 reaction is that sounds consistent with my understanding of the
24 law and the evidence. I just want to see it in black and
25 white.

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1 THE COURT: I think I might just fax it to you before
2 the week is out with the changes, and we can still change it
3 back if we have to.

4 On the next page, more directly to the defendants'
5 suggestion, where it says on the seconde line: If you find
6 that defendant PA and/or defendant PLO is liable, this is the
7 way I want to change those next two sentences.

8 If you find that defendant PA and/or defendant PLO is
9 liable to a plaintiff, then you must award that plaintiff a sum
10 of money that will justly and fairly compensate him or her for
11 any injury proximately caused by either defendant's conduct.

12 Most of that I think I lifted almost word for word
13 from what the defense suggested, but I think that's an
14 appropriate way to say it. They suggested I take out two
15 paragraphs below that the word furthermore. I don't have any
16 problems with that.

17 I am still thinking about and trying to think of it in
18 the context about the intervening cause instruction. I don't
19 have a strong feeling that it doesn't apply to someone for the
20 jury to evaluate that. I forget what you pointed to in the
21 facts.

22 There may be an analysis, for example, with regard to
23 Chana Goldberg, about whether or not there is an intervening
24 cause. I won't reference it any further than that. I am just
25 trying to think about, and I don't have all the different

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1 parties available, but in the first instance you should decide
2 whether or not you have a legitimate argument to argue that the
3 jury should not be instructed with regard to intervening cause.
4 As I say, I haven't thought it completely out, but I have been
5 trying to remember what things might qualify.

6 MR. YALOWITZ: I think it's a real hard argument for
7 them to make in the circumstances of this case. It may go, if
8 they want to argue that some of the injuries wouldn't have
9 happened but for the second blow, I understand they want to
10 make that argument, but to suggest that there were no damages
11 because of an intervening cause, I don't see how they make that
12 argument.

13 THE COURT: I am now evaluating that myself. I
14 haven't had an opportunity to really -- I am going to look at
15 some instructions.

16 MR. YALOWITZ: I haven't either. I am just reacting.

17 THE COURT: I agree that there is sufficient evidence,
18 and particularly if I change the instructions in the manner as
19 suggested with regard to proximate cause and those issues. I
20 am not sure that doesn't address that and whether the other
21 things really do qualify as some intervening cause.

22 MR. YALOWITZ: I understand the concept they are
23 trying to get at. I just don't think that captures it. I
24 think what we are trying to say is, don't give her extra, not
25 don't give her anything.

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1 THE COURT: Even in more fairness to you, I think what
2 their argument is -- and even more straightforward than that,
3 it's really not intervening cause -- is that any injuries that
4 she suffered from those circumstances were not caused by the
5 act itself.

6 Now, you can argue that it was because -- as I say,
7 it's not an appropriate characterization. There is sort of a
8 domino effect.

9 MR. YALOWITZ: That was her testimony and they chose
10 to not cross her and present anything in rebuttal to that.
11 That was certainly her testimony.

12 THE COURT: Let's put it this way. I think they do
13 have the right to argue, if they wish to argue that, or have
14 the jury consider whether or not all of the things that she
15 suffered are as a result of the terrorist attack or those
16 injuries were proximately caused by the terrorist attack.

17 I think they have the right to evaluate that and it is
18 for them to determine whether or not they believe that that is
19 the case or that's not the case. And my instructions to them,
20 either in a causation instruction or a separate intervening
21 cause instruction, would be appropriate for them to make that
22 evaluation.

23 Now, whether it really qualifies as an intervening
24 cause and whether there is something else with some other
25 defendants that they want to articulate, that's the other thing

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1 too. I have got 25 plaintiffs and this is the only one that
2 comes to mind that there is an arguable argument about. Think
3 about that more and look at that further.

4 With regard to the mitigation of damages, quite
5 frankly, my recollection goes back to where it started. The
6 case started out that way and never ended up that way. I think
7 we had evidence with regard to one plaintiff having to do with
8 economic or earnings loss.

9 Unless the defense argues that it applies to somebody
10 other than -- I don't know if it's related family members too,
11 that it's related to. But I don't even remember what would be
12 the argument if that particular person didn't mitigate.

13 It's not going to be the major issue in this case, but
14 if you can articulate for me as we talk about it further, maybe
15 on Tuesday, what is this addressed to and what is the evidence
16 that you want the jury to evaluate under this instruction, then
17 I can have a clearer idea of whether or not it would be
18 appropriate and necessary in this case.

19 With regard to treble damages, my view, and I will go
20 back and look at some of the cases and cases cited by the
21 defendant and I will hear from the plaintiff, my view when I
22 first looked at this before we started and during the trial is
23 that I am not of the view that any consideration or instruction
24 or evaluation or notification to the jury on treble damages is
25 appropriate in this case.

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1 I think the case law is fairly consistent that it
2 should play no role in their assessment of what the actual
3 damages suffered are. That's their role. And the statute is
4 written in a way that has convinced me that their sole role
5 with regard to damages, if they get that far, is to determine
6 what it is that they believe are the damages that have been
7 suffered by each plaintiff. And their sole role is to give us
8 what the value of those damages are. And the statute indicates
9 that after they determine those damages, those damages are to
10 be trebled.

11 In my view, the only reason I would tell them that is
12 because it's supposed to play some role in their determination
13 of this case. I think that would be inappropriate. It should
14 play no role in their determination of liability or actual
15 damages, and they have no role to play with regard to treble
16 damages.

17 So unless you can convince me that there is some basis
18 in law, and even here you only describe it as within my
19 discretion. Unless you say that there is something that says
20 that I am compelled to do so, which I am not aware of, even if
21 I could do that, there is nothing on these facts or unique
22 about their assessment and what we are asking them to do that
23 would give me any reason to raise this issue with them and
24 discuss this issue with them.

25 They have no role to play with regard to treble

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1 damages and awareness of that should not affect in any way
2 their determination of what the actual damages are that have
3 been suffered by plaintiffs, to the extent they reach damages.

4 Nominal damages, again, I have to sort of think it out
5 with the facts. The only thing I can think of, and I am not
6 even sure that's an appropriate analysis, is -- I forget what
7 the plaintiff's name was. Obviously, the only one that comes
8 to mind is Mr. Carter, who testified that he hadn't had any
9 contact with his daughter for ten years before that. I have to
10 look at what he really said his damages were and how it came
11 out and hear from Mr. Yalowitz on that.

12 I am not really persuaded that nominal damages is an
13 appropriate instruction in this case. Either there are damages
14 or aren't damages and either they have a value or they don't
15 have a value. If they have a one dollar value, that's their
16 value. If they have a thousand dollar value, that's their
17 value. And that's for the jury to determine.

18 Damages in the real world are not nominal. They are
19 what you have suffered as a proximate cause of the actions or
20 individuals found to be liable.

21 MR. YALOWITZ: I agree with that. A nominal damages
22 instruction can be very dangerous. I remember when we looked
23 at this back in the summer -- I haven't had a chance to go back
24 and look, but I think in our objections to the defendants'
25 proposed nominal damage instruction we had some law that

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1 suggested it's very dangerous and usually inappropriate. I can
2 see in like a voting rights case where you're really bringing
3 it to make a social change.

4 THE COURT: Or if the primary relief is some kind of
5 injunctive relief. Here it's just putting a value on what the
6 injury was. If that value is high, they give it the high low.
7 If that value is low, they give it the low value. If that
8 value is zero, they give it a zero. I have been in those cases
9 where jurors come back with zero dollars even though they find
10 liability because they believe plaintiffs have suffered no
11 damages. I would have to be convinced that that's necessary or
12 required in this case.

13 But on those issues that's sort of my thinking at this
14 point in time. We can discuss it further and I want to look at
15 some of the cases and convince myself that I am going in the
16 right direction.

17 What I want to address quickly is the question, and I
18 haven't come to a view yet, the question of a specific request
19 for a damage amount on noneconomic issues. I know that's an
20 important issue for the parties. I will give you an
21 opportunity to argue it further. Let me tell you what I am
22 feeling at this point.

23 I haven't yet found any case law that says I have to
24 do it or I have to not do it. I found no case law yet that
25 says there is error for me to allow it. My inclination is sort

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1 of this way, and we can talk about it further.

2 In fairness, I am probably inclined to allow Mr.
3 Yalowitz to ask for an actual number if he wishes to do that.
4 Not so much inclined for him to argue about, one, to indicate
5 that's his opinion to be the appropriate number or a fair
6 number or make an argument particularly about that. If he
7 wants to suggest a number and have the jury consider that
8 number, I think that may or may not be of some use for the
9 jury.

10 As I say, in fairness, I would want to present it in
11 that form and I would probably want to discuss and have a clear
12 idea, and have the defendants have a clear idea, before we
13 start the summations of what that number is going to be,
14 because I think it's unfair that the defendant has to sum up
15 first. Unless you guys come up with a different agreement as
16 to that. I will do it any way you want to do it. Obviously
17 plaintiff gets the last word because they have the burden of
18 proof. But I have been in some cases where the parties have
19 agreed that instead of defendant going first and plaintiff
20 going last that the plaintiff might go first, defendant goes
21 second and the plaintiff can have a rebuttal in criminal cases.

22 Assuming that we are going to have the defendant sum
23 up first and then the plaintiff sum up, I am probably more
24 inclined to allow you to put a number out there, or numbers out
25 there, if, as I say, it is not heavily laden with your personal

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1 assessment of what is reasonable, some strong argument about
2 whether that is fair and reasonable. I may be able to be
3 convinced that you should have some more leeway, but it's
4 really up to the jury to determine what number they are going
5 to get. But I think it may be worth for them knowing what
6 number you're going to be requesting. Because in their mind
7 they may be thinking if they get to damages, they may be
8 thinking less or in their mind they may be thinking more.

9 If you give them some baseline, then they can figure
10 out whether or not that's consistent with that baseline or
11 whether they want to use that for any guide as to what the
12 plaintiffs want. That's really all it comes down to.

13 I would look at it as an argument not of what the
14 lawyers think is reasonable, because that's for their
15 determination, but a request by the plaintiffs as to what they
16 want.

17 In fairness, I think whether or not the defendants
18 want to even address damages in their summations rather than
19 simply concentrate on liability, basically has been the way the
20 case has been proceeding, I think they have the right to know
21 when they sit down what you're going to be asking for so if
22 they want to say something with regard to that, in fairness
23 they should, rather than groping in the dark about what might
24 come afterwards and what amount of damages is going to be
25 sought from the jury.

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1 If liability is determined, they can make an
2 assessment of whether or not that's something they should
3 address or something that they shouldn't address, and let the
4 jury make their own determination consistent with my jury
5 instructions.

6 That's sort of my inclination. I can probably be
7 convinced one way or the other to go in another direction. I
8 would be open to further instructions to the jury on that issue
9 if I decided to go that way or the plaintiff thought of a more
10 specific instruction, different, stronger, or weaker than I
11 have given with regard to that issue. As I had proposed, I
12 would consider that.

13 At this point, my inclination is not really to
14 restrict the plaintiffs in that manner. But we can talk about
15 that further.

16 I guess I really need -- maybe it's appropriate if we
17 can do it now. Mr. Yalowitz, I sort of need some guidance from
18 you of in what way you want to present the issues to the jury.

19 MR. YALOWITZ: In terms of the verdict sheet?

20 THE COURT: Yes.

21 MR. YALOWITZ: I like the verdict sheet. I had that
22 one question for you about just clarifying some of the wording.

23 THE COURT: As a matter of fact, you did point
24 something out that I think I left out in error because it was
25 supposed to be consistent.

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1 What you pointed out in the first question, that the
2 attack was committed by a PA employee, it should have read, and
3 I have insert it the same way the second question reads, the
4 attack was committed or assisted by an employee. That's what
5 it says in the second and third.

6 MR. YALOWITZ: I see.

7 THE COURT: Committed or assisted. All three of them
8 are supposed to read that way. You did point that out to me.
9 I appreciate that.

10 The issue is, is there a way to condense this and
11 focus the jury on. I thought about maybe just combining those
12 into a material support question rather than sort of a more
13 general question. Maybe something along the lines of: If
14 plaintiffs prove that defendant was liable because a PA
15 employee, acting within the scope of his employment and in
16 furtherance of the interests of defendant PA, knowingly
17 provided material support and resources. I am not sure.

18 There are some cases where I think the evidence is
19 such that you will argue that in some of the cases the
20 terrorists themselves were PA employees, but in some cases it
21 really is not the actual perpetrator, terrorist, suicide bomber
22 or shooter, but they are someone who provided material support
23 to a person who was the shooter.

24 I didn't know how you wanted to argue that in terms of
25 liability. Do you really want to argue or have the jury try to

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1 figure out whether or not the PA is liable because an employee
2 committed and assisted, the PA may be liable because an agent
3 committed or assisted, the PA is liable because an employee or
4 agent provided material support? What do you want to do with
5 the providing support to a terrorist organization? And then we
6 talked about the harboring.

7 (Continued on next page)

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1 MR. YALOWITZ: Let me tell you where my thinking is
2 right now. There are definitely some questions that just have
3 to come out, because the case just didn't develop that way. In
4 fact, one of the cases that -- the June 19 bombing we wound up
5 not having evidence on an employee at all, and that's a little
6 glitch that we have to fix up in the -- you may have already
7 caught it.

8 THE COURT: I had to take these out, but there are a
9 number of ones that I flagged in terms that I didn't think we
10 would ultimately get.

11 MR. YALOWITZ: Also I think at one point in the charge
12 there's six attacks in which an employee participated, and it's
13 really only five, but okay, so that's kind a level on that we
14 all understand.

15 My inclination, although I haven't reached a firm
16 landing point, is to leave it with the array of questions. I
17 understand the idea of -- and where I started out in this case,
18 as you know, was basically guilty or not guilty, but then
19 having looked at the way you did it, I kind of liked it, but I
20 honestly want to reflect on it a little bit.

21 THE COURT: That's fine.

22 MR. YALOWITZ: We're not preparing to cross-examine
23 six witnesses.

24 THE COURT: I think that it was somewhat awkward for
25 me, because when I go back to the complaint, the complaint

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1 really doesn't give me that kind of guidance because it doesn't
2 break down any of those in the way that I had broken it down.
3 It doesn't even say what section.

4 MR. YALOWITZ: You're not complaining to the drafter.

5 THE COURT: That's why I said you understand what I'm
6 saying. That's what you are confronted with and that's what I
7 was confronted with in sort of in general talks about being
8 responsible for terrorist acts and sort of includes all the
9 different theories but doesn't differentiate.

10 MR. YALOWITZ: And there's something to be said for
11 giving them a real simple -- I haven't ruled it out, I just
12 kind of want to reflect on it.

13 THE COURT: Why don't you think about that.

14 MR. YALOWITZ: We could draft one that would work.

15 THE COURT: Also remember, look at it again with the
16 eye that -- from both sides with the eye that some of the
17 questions -- there is some inconsistency with some of the
18 questions. Some of the questions asked about whether the PA or
19 the PLO is liable because the PA or the PLO did certain things,
20 but other questions asked whether the PA and the PLO are liable
21 because their employees or their agents did certain things.

22 And I'm a little uncomfortable with the inconsistency,
23 although I think it's not an inaccurate way to say it. But
24 when I say: Is defendant PA liable for X terrorist attack
25 because it knowingly provide material support and resources,

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1 well, what am I saying to the jury? That it provided material
2 support and resources as opposed to its employee or its agent
3 providing material support? Or, as I say, with the first three
4 questions, pretty much the first three questions are the only
5 three questions right now, as I have worded, that address the
6 distinction between the PA, the PLO, PA employee, PA agent, PLO
7 agent. So I think it's little complicated, I don't think it is
8 particularly helpful for either side to have to trip over all
9 of those kinds of questions.

10 MR. YALOWITZ: One data point that I think is very
11 important in my thought process is whether the defendants have
12 an objection to the way you prepared the verdict form.

13 THE COURT: I was going to -- at this point,
14 Mr. Rochon, do you have a suggestion about how to approach
15 this?

16 MR. ROCHON: We certainly have some issues with parts
17 that I think Ms. Ferguson may be more educated on me.

18 THE COURT: Ms. Ferguson.

19 MS. FERGUSON: Your Honor, defendants believe it's
20 important to keep the vicarious liability theory separate from
21 the material support theory. So asking the jury whether a PA
22 employee planned or perpetrated the attack versus asking about
23 material support, because I think if you talk about assistance
24 in the context of the vicarious liability theory, it starts to
25 get very confusing about what is enough for assistance. And I

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1 just think, as a matter of clarity, there's different elements,
2 whether if you're talking about the employee carrying out the
3 act of international terrorism versus the PA and PLO
4 institutionally carrying out an act of terrorism by violating a
5 material support statute. So if we start blending those
6 together, I think it would get very confusing.

7 THE COURT: Although I don't really know on these
8 facts there is any distinction between assisting and providing
9 material support.

10 MS. FERGUSON: Well, the law in the Second Circuit is
11 that there is no aiding and abetting liability under the ATA.
12 If it's not the case that the defendant directly planned,
13 perpetrated the attack, then there has to be some showing that
14 some other predicate criminal act was violated, and the
15 plaintiffs have identified particular material support
16 statutes. So the assistance has to fall within the
17 requirements of that particular material support statute.

18 THE COURT: But reality is that if you're referring to
19 the predicate crimes, there's no dispute what the predicate
20 crimes are here, it's murder and attempted murder. It's just
21 not an issue to be even wasting the jury's time about whether
22 there are predicate crimes.

23 MS. FERGUSON: So are the three -- I would say three,
24 not five, the three cases, Bauer, the Goldberg, the
25 Gould/Waldman, where there's evidence of employees carrying out

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1 or being convicted of murder or attempted murder. And the
2 argument is that the PA is vicariously liable because those
3 employees, the plaintiffs would argue, acted within the scope
4 their employment. So that's one thing that the jury will have
5 to decide.

6 THE COURT: I keep getting confused. I thought all
7 employees that you're referring to were in fact the
8 perpetrators of the attack.

9 MS. FERGUSON: No. For example, in the Gould/Waldman
10 shooting, a number of employees were convicted of planning the
11 attack or recruiting the suicide bomber.

12 THE COURT: So your broader definition is not just
13 that they were the attacker.

14 MS. FERGUSON: They were convicted of some active role
15 in planning, perpetrating. They don't have to have been the
16 shooter, they don't have to have been the suicide bomber, but
17 if they were convicted of some role in the attack. And that's
18 what the convictions the plaintiffs went through for Goldberg,
19 Gould/Waldman and Bauer.

20 THE COURT: That's helpful, because my view -- that's
21 not the way I was looking at it. I was making the distinction
22 between those people who were the attackers, and if you weren't
23 the actual attacker, you were someone who either assisted or
24 you were someone who provided material support to the attacker,
25 that's the way I viewed the evidence. But you're looking at

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1 it --

2 MS. FERGUSON: I think a way that is less confusing
3 for the jury and I think the proper way to look at it is if
4 there's evidence that a PA employee planned the attack, that
5 also in theory if they could establish the employment and
6 causation and all the other things, that could give rise to
7 respondeat superior liability. So I think those the respondeat
8 superior cases with an employee has been convicted of not just
9 actually perpetrating but planning. That's three cases. But
10 the other three, there's no evidence of that, and it's only a
11 material support case.

12 THE COURT: But I looked at it a little differently.
13 Any employee who is involved in any way falls under the
14 respondeat superior theory.

15 MS. FERGUSON: They had to have committed an act of
16 international terrorism.

17 THE COURT: No, the PA has to have committed an act.

18 MS. FERGUSON: They were part of a conspiracy, and we
19 don't have a conspiracy.

20 THE COURT: No, there's no conspiracy argument. It's
21 not a conspiracy. It's an employee argument which is more
22 similar to an agency argument. If I am involved in helping
23 someone commit an act of international terrorism, and I do so
24 as employee, and I do so in furtherance of the interests of my
25 employer, I'm responsible, the employer is responsible.

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1 MS. FERGUSON: This is a really key point.

2 THE COURT: I don't understand your distinction.

3 MS. FERGUSON: The defendant has to be have committed
4 an act of international terrorism. If the argument is that the
5 PA, as the defendant, committed an act of international
6 terrorism because of the act of international terrorism that
7 the employee perpetrated, the plaintiffs have to establish that
8 the PA employee violated a particular criminal statute that
9 satisfies the predicate criminal act requirement.

10 THE COURT: Murder.

11 MR. YALOWITZ: Like murder.

12 MS. FERGUSON: But assisting isn't murder.

13 THE COURT: Assisting a murder is murder. Helping
14 somebody to commit a murder is a murder.

15 MR. YALOWITZ: It's a crime in every state in the
16 Union.

17 THE COURT: I don't concentrate on the predicate
18 having anything to do with down the road. The predicate crime
19 is in fact the act that killed the person. And if you helped
20 that person, assisted that person, gave support to that person
21 to commit that predicate act, you are responsible for that.
22 You don't have to separately murder someone.

23 MS. FERGUSON: I think that's directly inconsistent
24 with the Second Circuit law of aiding and abetting liability
25 under the ATA. You cannot say the defendant had committed an

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1 agent of international terrorism because an employee has aided
2 and abetted.

3 THE COURT: That would gut the entire statute. The
4 statute -- the act that resulted in the death of the innocent
5 person has to be an act of international terrorism. There's no
6 debate that the acts done by the terrorists that resulted in
7 the deaths and injuries of these individuals was an act of
8 international terrorism. So the question is -- you're sort of
9 saying -- well, I'm not even sure how you get past material
10 support, but --

11 MS. FERGUSON: That's a separate act of the
12 international terrorism. But what I'm concerned about is the
13 "assist" language is very loosey goosey. I don't know that the
14 jury will know what it means to assist. I think it has to be
15 tied to a particular predicate criminal act.

16 THE COURT: I think I understand what you're saying,
17 because if that's your view, and I'm not sure -- and
18 Mr. Yalowitz can think of it in terms of what his current view
19 is. If you think that the jury should be asked whether or not
20 the PA -- whether or not PA employees committed an act of
21 terror or whether -- and I guess we want to talk about PA and
22 we'll put the PLO aside, because I don't think that you have
23 the same argument.

24 But if you're saying it's appropriate to ask the jury
25 whether or not in a situation where the evidence indicates the

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1 person who perpetrated the crime was a PA employee, I don't
2 have any problems with that. But on the other hand, what they
3 still are entitled to -- and whether you put aside or take out
4 the word "assist" all together under the word "employee" -- but
5 they still are entitled to ask the question of whether a PA
6 employee on behalf of the PA provided material support to a
7 terrorist. They still are entitled to do that, because they
8 would still be responsible for -- let's forget the words
9 "assist," "aiding and abetting" or "conspiracy," they would
10 still be responsible for helping the terrorists commit the act
11 by providing the material support for that terrorist. And we
12 give all the different definitions to material support.

13 If they established the PA's employee, acting within a
14 scope of his employment, gave a bomb -- that's not the example
15 here, but gave a bomb to a suicide bomber so they could go blow
16 up someone on the street, that would be enough to ask the jury
17 whether or not the PA is responsible under respondeat superior
18 argument for providing material support to the terrorist,
19 because their employee did so within the scope of their employ
20 and on their behalf.

21 So I understand -- what we're talking about, all of us
22 are talking about is sort of the semantics of how we want to do
23 this. The theories are still there. They're either
24 responsible themselves for any terrorist act that the employee
25 himself committed, if they can prove that it was within the act

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1 of his employ, or they're responsible for any material support
2 that the employee provides within the scope of employment.

3 Whether he assists or whether or not you think that --
4 we haven't talked about whether you think there is a separate
5 agency theory with regard to the PA or whether that is just a
6 theory with regard to the PLO, I don't know what your view is
7 on that, but I'm not quite sure what theory you say the PA gets
8 to avoid by any of this language. They cannot avoid having a
9 jury consider whether or not a terrorist attacker was a PA
10 employee when he perpetrated -- he or she perpetrated the
11 terrorist attack if that's the evidence they find. And they
12 have the right to determine whether or not a PA employee
13 provided material support.

14 MS. FERGUSON: My main issue is with that "assist"
15 language.

16 THE COURT: So if it's simply committed, as I had the
17 question phrased the first time, and the second question is
18 provided material support, is that consistent with your
19 thinking?

20 MS. FERGUSON: Yes.

21 THE COURT: And what about the agency separate
22 committed through its agent.

23 MS. FERGUSON: So with respect to agency, your Honor,
24 first as to the PLO in your November opinion on our motion for
25 summary judgment, you granted that with respect to vicarious

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1 liability theories against the PLO.

2 THE COURT: Right, and I had no question as to the
3 vicarious liability question.

4 MS. FERGUSON: We view agency --

5 THE COURT: No, agency is not a theory of vicarious
6 liability. Vicarious liability is simply an employee within
7 the scope of the employment. That's what we were always
8 addressing. That's what I intended to address. That doesn't
9 address agency, that's different issue.

10 MS. FERGUSON: With respect --

11 THE COURT: And every entity acts through an
12 individual, so they must be an agency.

13 MS. FERGUSON: With respect to the PLO, I guess our
14 threshold argument will be that there is no evidence that's
15 been presented to the jury that any PLO agent is acting with
16 express, inherent or --

17 THE COURT: That's a different question. I haven't
18 debated -- I mean I haven't listened to the arguments of the
19 parties and whether or not the evidence is sufficient or not
20 sufficient to go to the jury. Right now I'm trying to figure
21 out, if it does go to the jury, what is the manner in which it
22 should go to the jury and whether or not this is a legally
23 improper way to ask a question or there's a better way to ask
24 the question.

25 MS. FERGUSON: It's our position that there is no

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1 liability under the ATA and agency theories. We haven't
2 identified any decisions that would allow that. And, of
3 course, we have also taken the position as the foreign
4 government we shouldn't be subjected to respondeat superior.

5 THE COURT: I agree with you on that.

6 MS. FERGUSON: Is there an agency instruction? We
7 believe it's important that it be clear that the principal must
8 have consented to the agent's performance of a particular act.

9 THE COURT: Well, I'm not sure that --

10 MS. FERGUSON: That is not quite in there.

11 THE COURT: I'm not sure that is inconsistent with the
12 instruction I gave on agency. You have to concede that if an
13 official in the PLO directed, asked some individual, whether
14 they were a PLO member or a PA official or a PA employee, if
15 they asked an individual I would like you to go and deliver
16 this bomb to X, because X is going to blow up the bomb at this
17 location and kill innocent people, if that occurred, you can't
18 argue that there's no theory of agency. It's clear that
19 someone on behalf of the PLO would have taken acts to provide
20 material support.

21 That's the only -- I mean that's semantics we're
22 talking about. If you don't want to use the word "agency," you
23 can give me a better word, but you can't get out of liability
24 because you say the statute didn't provide liability for the
25 PLO if Yasser Arafat in fact directed his next door neighbor to

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1 deliver a bomb to someone that he wanted to help blow up a
2 location. You know that that would make the PLO liable if he's
3 doing so on behalf of the PLO. The PLO doesn't have legs and
4 arms, the PLO is not a human being, a human being has to be an
5 agent for the PLO.

6 MS. FERGUSON: I think we will be submitting a letter
7 on this. I think instruction we propose --

8 THE COURT: Mr. Yalowitz, let her finish.

9 MR. YALOWITZ: Before we move to the next topic --

10 THE COURT: You cut her in mid sentence, Mr. Yalowitz.
11 Be polite.

12 MS. FERGUSON: We propose two tweaks to the agent
13 instruction. One is to make sure that the authorization has to
14 be for that particular act, and we'll provide citation for
15 that. And then also in the last paragraph on page 38 of the
16 draft it says if you find that the agent acted with express
17 apparent or inherent authority to bind the PA or PLO, you may
18 find the PA or PLO were responsible. We would add that the
19 agent acted within express or with express or apparent
20 authority and within the scope. I think that sort of got --

21 THE COURT: I'm sorry, what is the part that you were
22 adding?

23 MS. FERGUSON: They were acting within the scope of
24 that authority. You included that element earlier when you
25 described the rule.

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1 THE COURT: So why do I need to say it again?

2 MS. FERGUSON: When you summarize at the end it looks
3 like it's enough if they had some sort of authority.

4 THE COURT: I will look at it and see if it makes a
5 difference legally in terms of the way --

6 MS. FERGUSON: More fundamentally I think it's
7 confusing to introduce to the jury the notion of agency when no
8 one falls into that category that is not an employee.

9 THE COURT: How would you describe it?

10 MS. FERGUSON: I think the respondeat superior
11 instruction covers everyone.

12 THE COURT: No, it does is not. The respondeat
13 superior is only a theory of employment. The respondeat
14 superior theory is not a theory of direct liability.

15 MS. FERGUSON: So who are these non-employees?

16 THE COURT: The people that you asked to do the
17 terrorist act and participate in it. If I asked you to go out
18 across the street and rob the bank and bring me some money, you
19 are my agent.

20 MS. FERGUSON: There's no evidence of any principal
21 asking an agent to do that. There's no evidence of that.

22 THE COURT: Well, there are plenty of people who are
23 involved who are members of the PLO who are not employee of the
24 PA who there's evidence that they were involved.

25 MS. FERGUSON: Who? I honestly don't know who we're

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1 talking about.

2 THE COURT: Abdullah Barghouti.

3 MS. FERGUSON: Abdullah Barghouti was part of Hamas,
4 he was definitely not part of the PLO.

5 THE COURT: I know, but if he's acting at the
6 direction of someone from the PA, he's acting as an agent of
7 the PA.

8 MS. FERGUSON: There's no evidence of that whatsoever.

9 THE COURT: I apologize because I am trying to -- you
10 asked me to pick one and I thought maybe I would pick that one,
11 maybe hit the jackpot.

12 MS. FERGUSON: I said pick one.

13 THE COURT: But the reality is you can't say -- look,
14 as long as they have the bare minimum evidence that somebody
15 from the PA communicated with somebody -- somebody from the PLO
16 communicated with somebody else either in or outside the PLO or
17 the PA, and that communication was to further and advance the
18 terrorist attack, and the assistance that they provided helped
19 that terrorist attack take place, they are responsible for that
20 terrorist attack.

21 They can't give the guy a gun and a bomb -- and I
22 don't care what employment they have, somebody from the PLO or
23 a responsible person from the PLO can't ask some other person
24 to deliver a bomb or a gun so a terrorist attacker can do a
25 terrorist act and then you say oh, well, that's not providing

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1 material support.

2 MS. FERGUSON: Your Honor, there's an absence of
3 evidence about the PLO directing --

4 THE COURT: That's a different question. That's not a
5 question of the form of the jury verdict form. If you want to
6 argue that and I will consider that, and if you want to
7 convince me before the case gets to the jury, or you want to
8 convince me after we get a verdict, if the jury decides not to
9 find liability or to find liability that is not supported by
10 the evidence, that's a different question.

11 Right now I'm trying to concentrate on how do I
12 give -- how do I ask the jury to consider this if I determine
13 there's sufficient evidence for them to make this decision.
14 And the decision that they have to make is did somebody from
15 the PLO help or do something to provide material support to the
16 terrorist who committed the terrorist act. That's the
17 question. That's a complicated question. Whether you want to
18 characterize it as agency or characterize it as something else,
19 it doesn't really matter much to me, but I thought that was the
20 basis of how the parties were arguing this and making the
21 distinction between the PA being liable for its employees'
22 actions and the PLO only being liable if they took some
23 affirmative act that indicated that they were directing or
24 assisting or asking someone to in fact do a terrorist act that
25 took place.

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1 Now how you want to characterize that is a question.
2 I'm open to that. But you can't simply say well, there's no
3 liability under the ATA because they're not an employee and the
4 only theory is respondeat superior. That's not the only
5 theory. If none of these people were employees, there would be
6 no respondeat superior theory.

7 MR. YALOWITZ: So your Honor, if I could, I am happy
8 to let Ms. Ferguson continue on this discussion, I was just
9 wondering if it might be consistent with the Court's comfort to
10 take a short break.

11 MR. ROCHON: We are going to be submitting in writing
12 these issues, so --

13 THE COURT: I'm trying to get it up for you. You know
14 where my concerns are. As I say, that's not what I -- I don't
15 want to, at this point, debate whether there is sufficient
16 evidence. That's what I'm saying. I want to figure out if
17 there is sufficient evidence, how am I supposed to give this to
18 the jury. And I don't -- I may be misinterpreting what you're
19 saying, but if you're saying that there is no legal theory to
20 submit anything but a respondeat superior question to the jury
21 on the PLO, I can't accept that.

22 MS. FERGUSON: To make sure I will be useful, do you
23 want to focus on the form right now?

24 THE COURT: Yeah.

25 MS. FERGUSON: Because I have comments on the charge

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1 as well.

2 THE COURT: We could discuss the charge further, but I
3 assume 90 percent of what you have with regard to the charge
4 you gave me in the letter.

5 MS. FERGUSON: There is a few other items.

6 THE COURT: We only got ten percent.

7 Why don't you come back after a short break.

8 MR. YALOWITZ: I'm sorry for interrupting.

9 THE COURT: When you got to go, you got to go.

10 (Recess taken)

11 MR. YALOWITZ: Just a couple of things before we
12 continue. I'm informed that there was an error in the playing
13 of the deposition of Al-Sheikh. We don't consider it a
14 material error. The defendants pointed it out and told us what
15 it was. And so it was some additional testimony that neither
16 side has designated, and it was a couple of questions to which
17 it seemed like the witness didn't know the answer.

18 THE COURT: You mean it was played?

19 MR. YALOWITZ: It was played and it shouldn't have
20 been played. I don't have a problem with it.

21 Then the other thing is we were trying to work out
22 some arrangements on the timing of our witness disclosures. I
23 have proposed to Mr. Rochon that he let me know as soon as he
24 can what of the three or four witnesses he's thinking about,
25 which ones he's actually going to call, and I can let him know

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1 24 hours later who my rebuttal witnesses are, if any, and I am
2 hoping he will accept that proposal before we leave, or if he
3 doesn't accept the proposal you'll help us reach an arrangement
4 that is reasonable.

5 THE COURT: I probably won't.

6 MR. ROCHON: I would like to know who their rebuttal
7 witnesses are going to be, and I think if they're based on
8 things that are already in evidence then there would be no
9 reason not to follow the usual rule.

10 THE COURT: You guys make me give my standard line.
11 I'm not an interpreter or translator for lawyers. You
12 shouldn't have to ask me what you want to ask them. Ask him.

13 MR. ROCHON: We have.

14 THE COURT: And he should give you an answer.

15 MR. ROCHON: He wants --

16 THE COURT: You shouldn't have to tell me you asked
17 him.

18 MR. ROCHON: So far we haven't worked out.

19 THE COURT: What we have is a failure to communicate.

20 MR. ROCHON: Do I get to be Paul Newman?

21 THE COURT: What would you like me to do?

22 MR. ROCHON: I would like you to tell Mr. Yalowitz
23 that he should let us know by, say, Sunday if he has rebuttal
24 witnesses, who they are, if they are based on something in
25 evidence now.

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1 THE COURT: When are you going to tell him who your
2 witnesses are?

3 MR. ROCHON: We told them who they may be.

4 THE COURT: When are you going to tell them who the
5 actual witnesses are?

6 MR. ROCHON: If we cut them, we'll let them know. I'm
7 not going to eyeball them until Sunday, so that's why. If I
8 was eyeballing them right now, I would tell him right now. I
9 want to literally eyeball these people. You don't want to hear
10 about the tactics and why, but there's reasons for it.

11 THE COURT: All I think is that -- all Mr. Yalowitz is
12 asking for, as you anticipate, the witnesses show up and they
13 make you as happy as you want to be, who are you going to call?
14 Are you going to call them all --

15 MR. ROCHON: Yes.

16 THE COURT: -- if they come in and say exactly what
17 you want them to say?

18 MR. ROCHON: I will call three, because you told me I
19 couldn't call one.

20 THE COURT: So you would call those three.

21 MR. ROCHON: Yes, and no more.

22 THE COURT: And you have given them the substance of
23 their testimony?

24 MR. ROCHON: We have the two witnesses, and we the
25 proffered as to the woman, and you excluded the other fellow,

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1 so the answer is yes.

2 THE COURT: What is the length of their testimony?

3 MR. ROCHON: Length of direct testimony would be 30
4 minutes apiece, at most. And I could be pretty efficient. I
5 got Shehadeh on and off.

6 THE COURT: I thought this would be 30 minutes.

7 MR. ROCHON: It could be less.

8 THE COURT: I'm sure it will be.

9 MR. ROCHON: No more than.

10 THE COURT: Is there anything else that you need to
11 know, Mr. Yalowitz, to be able to devastatingly cross-examine
12 these witnesses?

13 MR. YALOWITZ: I thought my cross was pretty
14 effective.

15 THE COURT: So I think that if you want some more
16 information --

17 MR. YALOWITZ: The other thing is the criminal
18 records.

19 MR. ROCHON: I'm making that effort, and they're all
20 ancient, but I'm getting them anyway. But my request goes to
21 his rebuttal witnesses.

22 THE COURT: When are you going to be able to tell them
23 that you have rebuttal to the witnesses we've already heard?

24 MR. YALOWITZ: I'm fairly confident I do have
25 rebuttal, and I'm trying to figure out who that witness is

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1 going to be.

2 MR. ROCHON: That was a very lawyerly answer.

3 MR. YALOWITZ: No, it's a true answer.

4 THE COURT: Who do you think that witness might be?

5 MR. YALOWITZ: I think it will either be Shrenzel or
6 Eviatar or Spitzzen. I think those are the three possible
7 witnesses.

8 THE COURT: One of them you heard from.

9 MR. YALOWITZ: Spitzzen we heard in his capacity as a
10 Arabic speaker.

11 MR. ROCHON: Spitzzen has never been on a witness list.

12 THE COURT: Why don't you --

13 MR. ROCHON: We'll see what we have to say once we
14 know what he's trying to say rather than have him argue it now.

15 THE COURT: Could you let him know by Sunday?

16 MR. YALOWITZ: I will let him know 24 hours after I
17 hear from him.

18 THE COURT: Can you let him know by Sunday?

19 MR. YALOWITZ: If he can let me know by Saturday.

20 MR. ROCHON: Judge --

21 THE COURT: I'm done, guys. You know, I'm done. You
22 live with each other. That's how you do it.

23 MR. YALOWITZ: We have had a very significant failure
24 to communicate. There's been a real breakdown of trust.

25 THE COURT: It's really not my job to do this.

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1 MR. ROCHON: But Judge, we should get a proffer of
2 whatever rebuttal they want.

3 THE COURT: A lot of things should happen in this
4 case.

5 MR. ROCHON: You should force them to give a proffer
6 of rebuttal before Tuesday.

7 THE COURT: Whatever date you give them, I will give
8 you.

9 MR. ROCHON: I will give him my information of whether
10 I call these people before Tuesday, of course.

11 THE COURT: Then he should give you before Tuesday.

12 MR. ROCHON: That's what I'm asking for, at the same
13 time.

14 THE COURT: You tell him when you're going to give him
15 the information and you let him know what ahead of time when
16 you give him the information he should be prepared at that same
17 time to give you his information.

18 MR. ROCHON: Thank you.

19 THE COURT: Can you live with that, Mr. Yalowitz? So
20 if you want to work out an earlier date rather than a later
21 date to prepare yourselves, then do so.

22 MR. YALOWITZ: We'll deal with it as -- we'll play it
23 as you have laid it out.

24 THE COURT: Good.

25 MR. YALOWITZ: It will be fine.

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1 THE COURT: So.

2 MR. YALOWITZ: We sent him an email like four weeks in
3 the middle night that has all this information.

4 THE COURT: I'm sure you did. I would be shocked to
5 hear anything other than that from you.

6 MR. YALOWITZ: So on the real stuff, I have like four
7 agenda items on the jury instructions.

8 THE COURT: Go ahead.

9 MR. YALOWITZ: Agenda item number one is the first
10 element of the substantive count. I want to make sure I
11 understand what it's intended to do.

12 THE COURT: Where are you?

13 MR. YALOWITZ: I'm really on page 39. And what I'm
14 thinking you're driving at here is you are foreshadowing
15 element number one, which is knowingly. And my concern is that
16 it's got -- it sort of builds in a thing that might be
17 misconstrued, particularly in closing, which is knowingly
18 committed a violent act intended to cause death or serious
19 bodily injury.

20 And I think a lawyer reads this and says well, the
21 defendant, through its employees or agents, knowingly did that,
22 and that kind of -- I understand where you could get that, but
23 I think for the jury what you may have been driving at was the
24 defendant through its employees or agents acting knowingly,
25 because that's then what the jury instruction says, or

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1 knowingly committed an act of international terrorism or
2 something like that.

3 I don't have a problem with -- let me put it this way,
4 I don't have a problem that we haven't discussed about
5 knowingly, but I just worry about the committed a violent act
6 intended to cause death or serious bodily injury.

7 THE COURT: That's what we were just -- Ms. Ferguson
8 and I were just talking about that, partially what we were
9 talking about, but that's the predicate act, and that's the
10 predicate act that must be established. And frankly, there's
11 no reasonable view of the evidence that that act has not been
12 established, clearly an act to cause death or serious bodily
13 injury, that it was committed, but they must find the defendant
14 is the one that committed it.

15 MR. YALOWITZ: So frankly, in the context of the
16 overall instructions, I don't think this is a problem, I'm
17 worried about seeing it blown up on the screen saying you have
18 got to find that the PA committed an act, and I'm more worried
19 about how it might be used in closing. And I agree with you
20 that the predicate act -- there's not really a genuine dispute
21 about the predicate act, it's all about the link, and so I just
22 worry about --

23 THE COURT: If you have better language, suggest it to
24 me and I will review it. I don't think the jury is going it to
25 fine tune this like the lawyers do, they just want to know what

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1 they're supposed to figure out. And most of this, except for
2 some individual elements, most of the jury can figure out for
3 themselves what they have to decide. They already know what
4 they have to decide.

5 MR. YALOWITZ: I think so. I will get you some
6 language on that.

7 THE COURT: If you have something else to propose.

8 MR. YALOWITZ: And I think that just if you want to
9 talk about -- I think we already talked about recklessness, I'm
10 going to think about whether there's anything I want to add to
11 that discussion.

12 THE COURT: You think this is a reckless case?

13 MR. YALOWITZ: I want to think about whether there's
14 anything I want to add or I may want to stand on the discussion
15 we had. If I do think there's anything I want to add, I will
16 get it to you.

17 On alter ego, if you want to discuss it, I can.

18 THE COURT: We could discuss it briefly. I'm still
19 struggling with, one, where you get the theory, where you get
20 that as a theory of liability. Are you trying to lift this
21 from a pierce the corporate veil analysis or is there some
22 theory of liability that you think is associated with these
23 claims?

24 MR. YALOWITZ: So I think that there's pretty strong
25 evidence that there's a lot of leakage between the PA and the

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1 PLO and Fatah. I mean I think that obviously supports an
2 agency theory. I don't have any problem with that. I think it
3 does support an alter ego theory, but I want to think about
4 whether we really need to have that.

5 THE COURT: Which alter ego theory are we using? Out
6 of a corporate alter ego theory?

7 MR. YALOWITZ: Yeah.

8 THE COURT: Or piercing the corporate veil?

9 MR. YALOWITZ: Right.

10 THE COURT: Because frankly that's not even a theory
11 of liability. If you were really talking about a genuine alter
12 ego situation, you would only be suing the PA in which you got
13 a judgment against the PA asking me to enforce that judgment
14 against the PLO, I wouldn't be giving that to a jury, that's a
15 legal argument. That's not a factual determination for them to
16 make. You would have to demonstrate that the judgment you get
17 against one should be applied against the other, considering
18 all the elements that one is supposed to apply for alter ego.

19 That's why I keep asking you where do you get this
20 theory of liability to the jury of alter ego that somehow
21 they're supposed to make that determination and say I enter a
22 judgment against one, and since I'm going to enter a judgment
23 against one we think the other one is the same thing so we're
24 going to make that judgment applicable to other. That's not a
25 jury determination.

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1 MR. YALOWITZ: I want to look at it in that light
2 then, Judge, because what I want to look at I hadn't really
3 thought about it in the way that you're saying is that it's
4 really a legal issue, not a fact issue. So let me just take
5 another look at that. And again, if there is something I think
6 we need to raise with you on it, I will do that.

7 THE COURT: I understand your general theory, and I
8 have no problems with your taking the opportunity to argue that
9 the relationship is so close that it is appropriate for them to
10 conclude that when a person has taking acts on behalf of one
11 it's logical to conclude they were taking acts on behalf of the
12 other.

13 Particularly when you're talking about Yasser Arafat,
14 I'm not sure that he would have disagreed with you if he made a
15 decision on one day that wasn't a decision on both the PA and
16 the PLO in his individual capacities in each entity. But just
17 to sort of say well, he made a decision on behalf of the PA one
18 day and then that is so closely associated that that means that
19 anything he would decide on behalf of the PA the PLO is liable
20 for. If the PA -- the mail truck ran over somebody in the
21 street, somehow you could sue the PLO on some theory that
22 they're the same as the PA and get a judgment for the accident.

23 MR. YALOWITZ: Frankly I think what you're saying is
24 that is just not a jury issue.

25 THE COURT: That's my point, one of my issues.

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1 MR. YALOWITZ: Let me look at that and think about it
2 in that context.

3 And then the other thing I think I have given you some
4 thoughts on ratification, if you want to discuss it.

5 THE COURT: I just don't see it on these facts, and
6 I'm real cautious about being the first judge to say that under
7 the ATA that the theory of liability is that if someone commits
8 a terrorist act and you later approve of it that therefore the
9 party is responsible for the terrorist act.

10 And frankly, I'm not even sure -- again, the weakness
11 of that argument is also in the facts, not just the legal
12 theory, because it's the inference that you want drawn. There
13 is no evidence that anyone in the PA or the PLO after the fact
14 said I am taking responsibility for this particular terrorist
15 act. There's just no such adoption of that. The things about
16 oh, this one is a martyr or this one let's write a song about
17 or this one let's say that they're a hero --

18 MR. YALOWITZ: Let's keep him on the payroll and give
19 him promotions and give him a job and say he fought for his
20 country.

21 THE COURT: That was never done in the context of the
22 terrorist act. There's no evidence here that anyone said okay,
23 this guy is a terrorist, and somebody else said okay, yeah, so
24 let's give him some money. That's not it. There's no such
25 evidence that any of those acts, those decisions were made in

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1 contemplation of any individual terrorist act that was
2 committed. There's not that evidence.

3 MR. YALOWITZ: This may be -- look, this may be one
4 where we aren't going to reach agreement on.

5 THE COURT: I'm trying to tell you where I am. If you
6 have something else that you think is persuasive in terms of
7 case law that you want to show me, I'm perfectly willing to
8 review that. But as I keep thinking about it and reviewing it,
9 it is real -- it would be dangerous ground for me to say that
10 plaintiffs can recover on this kind of theory given what in
11 most of these cases is such a politically complicated scenario
12 of -- I can understand if you say that a certain country or
13 entity is behind a terrorist act, whether it's 9/11 or
14 something else, but it's a whole different thing to say well,
15 after it happened they said well, we're real glad it happened
16 and we sent the terrorist family a bunch of flowers to say hey,
17 we didn't do it but we thought of it and we probably would
18 have. Those kinds of theories, I don't see those theories
19 being advanced in any of these cases.

20 (Continued on next page)

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1 MR. YALOWITZ: Look, I think you're doing a great job
2 of laying out the defendants' kind of best argument. I
3 understand it. I want to give you what you need to come to
4 ground on that issue. I think the most informative case we
5 have is the one we talked about from Judge Cogan. Admittedly,
6 that was a little different. That's a different statute.
7 That's not this statute.

8 THE COURT: If you want to give me your permission, I
9 will pick up the phone and call Judge Cogan and ask him what he
10 was thinking.

11 MR. YALOWITZ: I encourage it. I don't think you need
12 the parties' permission.

13 THE COURT: I don't want to make the decision based on
14 something that I did that we didn't discuss. I just don't feel
15 comfortable making the call and have you argue from the cases,
16 and then I simply say, well, I spoke to Judge Cogan and that's
17 not what he meant.

18 MR. YALOWITZ: I know how these things are. You have
19 given respectful consideration obviously, but you're going to
20 make your own decision based on the statute and case and the
21 facts which you have been living through. I don't have a
22 problem with you talking with Judge Cogan. I sort of assumed
23 you have.

24 THE COURT: I talked to him before we started the
25 trial, particularly with regard to jury selection and with

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1 regard to some of the issues in this case.

2 MR. YALOWITZ: I assume that if that happens, he is
3 not going to sit on a panel, but he would recuse himself.

4 THE COURT: I don't anticipate that would be a
5 problem. I just don't like to factor in things outside of what
6 you have submitted to me.

7 MR. YALOWITZ: I would encourage it. I don't know
8 where you're going to come to ground. I think we have given
9 you really a case that does fit ratification, with regard to
10 the employees and agents, very tightly. I understand the
11 concern you have about you don't have a preexisting
12 relationship. It's really a theory that comes out of contract
13 law. I get that.

14 THE COURT: I'm not even sure that's the case that you
15 presented. I am not sure that's really your argument. Is your
16 argument that they didn't know anything about this before it
17 happened and they just adopted it after it happened? I would
18 be shocked if you told me that's what your theory of this case
19 is.

20 So what you're asking me to give is not even the
21 theory of the case, not even the evidence you presented. You
22 will stand here and say to me and the jury, no, we have
23 presented sufficient evidence to indicate that they were
24 complicit in this from the beginning, if not from the beginning
25 at least until the time it took place, and then you want to

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1 give me a ratification theory to give to the jury.

2 MR. YALOWITZ: Obviously, as you said, the evidence is
3 circumstantial evidence of complicity. There is no doubt about
4 that. And that's the theory we are going to the jury on if you
5 don't give us that ratification charge.

6 We will think about it. I think it's a legitimate
7 alternate charge given the defense posture, and that's what
8 wound up happening in the Chaudry case. It wasn't really a
9 plaintiff driven charge; it was really a defense driven charge.

10 THE COURT: The problem with the cases that you gave
11 me is that I think most of the arguments you're making are not
12 in the case law itself. It may be in the underlying jury
13 instructions and some references to it, but there is no case
14 law that says that. I have read those cases and those aren't
15 the issues in those published opinions.

16 MR. YALOWITZ: Certainly that's true in the circuit.
17 I went back and looked at what the circuit said. It was an
18 issue in the briefing and the circuit said, look, we don't have
19 a problem with it. That's different.

20 THE COURT: I was looking for guidance there. That's
21 why I struggled with it because I didn't find the guidance in
22 those cases that you cited.

23 MR. YALOWITZ: That is different than saying, this was
24 the charge read in such and such a case which the circuit
25 approved.

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1 THE COURT: We will look at that.

2 Mr. Rochon.

3 MR. ROCHON: I am just hoping that some day we finish
4 with this ratification. We have spent a lot of time on it. It
5 didn't make it past summary judgment. Sooner or later Mr.
6 Yalowitz has to accept where we are.

7 THE COURT: That will be the last day on his way out
8 the door.

9 MR. YALOWITZ: Let me say, I am here for you on this.
10 If you have come to ground and you have reached a ruling and
11 you reject my position, I will move on. If it's an open issue,
12 I am available to help you reach the decision. So I am not
13 trying to reargue anything.

14 THE COURT: I understand that.

15 Is there any other issues that you wanted to address
16 now?

17 MR. YALOWITZ: I have been carrying my Redweld with my
18 notes back and forth every day, and I don't know if it's in the
19 witness room or what. I think what we can do is over the
20 weekend we may have a few nits and nats. I do want to give you
21 the language on that first element just to see if there is
22 something.

23 THE COURT: Send me a proposal.

24 MR. YALOWITZ: I understand your intent is to capture
25 the knowing --

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1 THE COURT: I am not wedded to that language.

2 There were some other issues you had raised. You
3 wanted me to do something with policy and practice.

4 MR. YALOWITZ: I thought you had ruled on that.

5 THE COURT: I thought I did too.

6 You requested a missing witness charge. I wasn't
7 quite sure what the basis for that was.

8 MR. YALOWITZ: Let me look at that. Obviously, I can
9 argue, you know, where is Waldo. The obvious guy is Tirawi.
10 He is a globetrotting -- we heard evidence from the defendants
11 that he trots around the globe. He was on a jet two weeks ago
12 and he didn't come to the court. I don't think I have a basis
13 for a witness charge on him because I don't think he is a
14 current employee.

15 THE COURT: That's what I was going to say. It's a
16 two-edged sword. The standard instruction is the witness is
17 available to both sides. Even in this case, even if he is
18 outside the jurisdiction, there is no evidence in this case
19 that they have greater access to him than you have. You or
20 your team has been over there, and if he was available to be
21 deposed and we had depositions that the jury has, if you
22 thought he had something relevant to support your case to say,
23 you would have pursued that.

24 MR. YALOWITZ: By "you," you mean you or your
25 predecessor. But I live with the shoes I am wearing. I

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1 understand that.

2 THE COURT: I will allow you to characterize it any
3 way you want.

4 MR. ROCHON: I don't think those shoes ought to be
5 filled by anyone arguing a failure to present any witness
6 unless they clear it in advance with the court. If there is
7 not a basis for the instruction, there is not a basis for the
8 argument.

9 MR. YALOWITZ: That's not true. That's completely not
10 true.

11 THE COURT: There are rules and there are exceptions
12 to the rule. But I can tell you, if you make that argument,
13 what we may end up with is my granting their request for an
14 instruction that witnesses are available to both sides and that
15 you have made this argument, but you have given no basis for
16 them to conclude that somehow they have greater access to this
17 witness than you, and if you thought he had something to say
18 that would be helpful to you, they should assume that you would
19 have brought him.

20 If you think you're going to go in that direction, you
21 might want to make sure that I know about it beforehand
22 because, quite frankly, I am not sure what you're trying to
23 imply that he would have said had he been here. I am not sure,
24 based on these facts, the jury has any reason to believe that
25 he would come here and be a useful witness for their

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1 consideration. And if he was here, you would probably be
2 making that argument, that he was a useless witness for their
3 consideration.

4 MR. YALOWITZ: It would depend on what he said.

5 THE COURT: As I said, you can assume that he probably
6 would say something that you weren't going to argue that that
7 was something that you had hoped you would bring him in here to
8 say. There is no evidence that he had anything to say that
9 would be helpful to you.

10 MR. YALOWITZ: If he would tell the truth there is.

11 THE COURT: That's a really important point. That's
12 why we swear them in. That's why we exclude hearsay statements
13 out of court.

14 If you have got further suggestions on the verdict
15 form, my request from both sides at this point is draft me a
16 question and send it to me, and send it to me before the end of
17 business tomorrow. I want to see what it is you're asking me
18 for. I am not going to debate these in the abstract anymore.
19 If you have got a suggestion of how to ask the question, you
20 give it to me and I will consider it. And I have given you my
21 best attempt to try to see how this is going to go. So make up
22 your mind how you want to address these issues if they go to
23 the jury.

24 Now, I don't know what the defense wants to do in
25 terms of -- did you intend to reserve further motions or did

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1 you intend to make further motions?

2 MR. ROCHON: We would like to argue the Rule 50 at a
3 time convenient to the court. It would be best done before the
4 close of all evidence.

5 THE COURT: OK.

6 MR. YALOWITZ: Did your Honor want a written response?

7 THE COURT: Only if you thought that's the best way
8 you want to respond. If you want to respond orally, you can do
9 that. I will hear them.

10 My view of it at this point is that if you have to
11 work real hard to convince me, then I am going to at least
12 reserve decision until after we get a verdict, and then I can
13 look fully at the transcript and fully evaluate that. But if
14 there is something that is fairly obvious that we can talk
15 about that's clear to me that there is just no way at this
16 point a jury could find on that basis.

17 At this point, are you doing anything with harboring?

18 MR. YALOWITZ: The two that we talked about.

19 THE COURT: You're still going to request those
20 questions.

21 MR. YALOWITZ: Yes.

22 There is law, like in the foreign sovereign immunity
23 cases, where Al Qaeda goes to Sudan and the country of Sudan
24 lets Al Qaeda have a base, and they say that's harboring
25 terrorists. You can make that argument here but, quite

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1 frankly, it's not something I feel we really need to go to the
2 jury.

3 THE COURT: I'm not sure I would understand that
4 argument here.

5 MR. YALOWITZ: It's good that we don't have to discuss
6 it then.

7 THE COURT: It's a basic principle. If they gave safe
8 haven to someone that they knew who had committed a terrorist
9 act and was wanted for that, or they were seeking to find out
10 who it was, or they gave safe haven to someone in preparation
11 for a terrorist act, then that's harboring a terrorist. It's
12 not rocket science.

13 I will look at it as to the ones you want it for, and
14 I think that if you want the jury to make a specific
15 determination separately as to one or two of these events and
16 you can convince me that there is sufficient evidence, when I
17 hear the motions we can discuss that further.

18 Give me as much as you can over the next couple of
19 days. The building is closed tomorrow but --

20 MR. YALOWITZ: ECF is still open.

21 THE COURT: I have learned that 24 hours a day in this
22 trial.

23 MR. YALOWITZ: We have learned it too.

24 THE COURT: I would like to go back to the old ways,
25 where you mail it to me.

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1 I am going to try to, at least by Friday, to sort of
2 have a good idea of what you want and have a good idea of what
3 my position is so we can have further discussion Tuesday
4 morning, and then further discussion before I have to leave on
5 Tuesday, and then just finalize everything up on Wednesday
6 morning if we can have summations on Wednesday. I will wait
7 till Tuesday to ask you about how long your summations will be
8 so we can plan the jurors' time.

9 If you have any specific recommendation about jury
10 instructions or the verdict form, give it to me as quickly as
11 possible. We are at the point where we are not going to just
12 discuss it. You have got to give me specific language that you
13 want, or tell me specific language that you want out or give me
14 a specific instruction, and if that's an appropriate
15 instruction on the law, then I will consider it and consider
16 putting it in. If it's not an appropriate alternative
17 instruction, unless you convince me that I should come up with
18 a third alternative, I am going to pretty much stick with what
19 I have got.

20 MR. YALOWITZ: I don't want to impose on you or your
21 clerk too much, but I know you have been working on these and
22 have made some adjustments. If it's possible to get them
23 electronically, even in PDF form.

24 THE COURT: If you give me substantially all of what
25 you recommend by tomorrow end of the day or early evening, I

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1 will try to be in here Friday to get it all done so that we can
2 electronically send it back to you in what you convince me or
3 not convince me the form that it should be so we can discuss it
4 first thing Tuesday morning or you can respond to it even
5 further over the long weekend.

6 MR. YALOWITZ: Like I said, the only one that I think
7 here being open is ratification. I know you're going to look
8 further at that.

9 THE COURT: I will look further at that. If you think
10 there is something else I haven't considered, you can ask me to
11 consider it, send it to me. As I say, if I haven't already
12 said so, and I think I have, I'm leaning toward that it is not
13 an appropriate theory based upon the facts and the proof and
14 the evidence that's been presented in this case.

15 MR. YALOWITZ: I am shocked to hear that.

16 THE COURT: As I say, this is a pretty straightforward
17 dispute. You say they did it. They say they didn't.

18 MR. YALOWITZ: That's great. I think we will stand on
19 where we are, unless you have more questions.

20 THE COURT: I will try to get it to you on that
21 schedule because I think it's time for you to spend most of
22 your time in preparing closing arguments and discussing this
23 with the jury rather than to try to argue it to me. I want to
24 give you the full opportunity to be prepared for summations,
25 wind up this case with your last few witnesses, and then we can

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1 move forward efficiently on Tuesday and Wednesday.

2 If we can get this case to this jury by Thursday, we
3 can give them Thursday, Friday to deliberate, and if they have
4 to come back Monday to deliberate, we will give them that too.
5 In terms of the schedule, it has worked out well. I think the
6 jury really did need this long weekend. I think it's to your
7 advantage that the jury will have several days to rest before
8 they have to start to think about this case because I think it
9 is very demanding on the jury and on all of us.

10 I will see you on Tuesday. I will wait to hear from
11 you tomorrow if you have something for me to look at. And I
12 will try to prepare so we can get you something before Friday
13 night and I will send it to you.

14 Have a good weekend everybody.

15 MR. YALOWITZ: Thank you, Judge.

16 THE COURT: You're welcome.

17 (Adjourned to February 17, 2015, at 9:15 a.m.)
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